



10 July 2024

To the Citizens of Westbrook and the General Public at Large:

Attached is a copy of Westbrook Housing's 2025-2029 Five-Year Plan. This copy is for review only and must be left in the office. Electronic copies can be viewed on the Westbrook Housing Authority website www.westbrookhousing.org. The scope of this plan pertains only to our Housing Choice Voucher Program (HCV). Through its conversion of Public Housing through the HUD - Rental Assistance Demonstration Program, Westbrook Housing no longer has Public Housing which is identified in its update to its goals. The updated 5-Year Plan contains significant amendments and modifications to the Housing Authority's Housing Choice Voucher Program Administrative Plan. These amendments and modifications reflect recent HUD regulatory changes that incorporate revised inspection standards for the Housing Choice Voucher Program that will eliminate the Housing Quality Standards (HQS) inspection standards as replaced by the National Standards for the Physical Inspection Real Estate (NSPRE); Changes, that address income and assets for the Housing Choice Voucher (HCV) program and HCV-Project Based Voucher (PBV) individual property waiting lists as identified in HUD's Housing Opportunity Through Modernization Act of 2016 (HOTMA) Final Rule Implementing Sections 102 and 104 as referenced in the Federal Register and HUD PIH Notices 2023-06, 2023-13, 2023-27, and 2024-19; and, updates including human trafficking to the Violence Against Women Act (VAWA).

If you have any questions or comments, they can be directed to me at 854-6805; or by emailing me at claroche@westbrookhousing.org, or to Jennifer Haberern-Gordon, Operations Director, at 854-6827, or by email at jhgordon@westbrookhousing.org.

There will be a public hearing at 9:00 A.M., on Wednesday, September 4th, at Westbrook Housing's Main Conference Room, 30 Liza Harmon Drive, Westbrook, ME.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris LaRoche".

Christopher LaRoche
Executive Director

.....



B.3	<p>Progress Report. Include a report on the progress the PHA has made in meeting the goals and objectives described in the previous 5-Year Plan.</p> <p>See Attached Progress Report</p>
B.4	<p>Violence Against Women Act (VAWA) Goals. Provide a statement of the PHA's goals, activities objectives, policies, or programs that will enable the PHA to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.</p> <p>Westbrook Housing (WH) is committed to assisting individuals and families who have been victims of domestic violence, dating violence, sexual assault, or stalking by ensuring compliance with all aspects of the Violence Against Women Act. Goals, Objectives, Policies and Programs The goals and objectives of Westbrook Housing's policies and procedures as they relate to victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking is to help victims obtain or maintain housing, prevent domestic violence, and enhance survivor safety while ensuring victims and their dependents are properly housed in safe, secure, habitable, and affordable conditions. By taking advantage of several regional training opportunities, Westbrook Housing has ensured that staff has the knowledge to effectively administer and comply with all provisions of the Violence Against Women Act. Westbrook Housing staff works closely with the representatives of Westbrook Police Department and Family Crisis Services to support victims of domestic violence, dating violence, sexual assault, or stalking. Family Crisis Services accepts referrals, offers individual counseling, and group prevention programs to Westbrook Housing staff and tenants. Information about the programs and services are posted prominently in the lobby at all WH facilities. Westbrook Housing also employs a variety of methods to directly assist victims of domestic violence, dating violence, sexual assault, or stalking to maintain their housing including: evicting the perpetrator so the victim and family can remain in their current apartment, and/or transferring the victim to another public housing unit. All residents are informed of all resources available to victims of domestic violence, dating violence, sexual assault, or stalking at the time of their annual recertification. Westbrook Housing has: Amended leases/assistance contracts to reflect provisions of Sections 6(l) and 8(d). o The Housing Choice Voucher program administered through Westbrook Housing adopted the revised Tenancy Addendum (HUD-52641-A) as soon as it was made available in 1/2007. o The Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum (HUD-91067) as soon as it was made available in 9/2008. Amended Housing Assistance Payment contracts (HAPc). o The Housing Choice Voucher program administered through Westbrook Housing adopted the revised HAPc (HUD-52641) as soon as it was made available in 1/2007. Amended the Administrative Plan. o For FY2024 The Administrative Plan has been revised to include language throughout as to how Westbrook Housing will manage the new provisions of the act. Obtained and disseminates certification form HUD-50066 o Notified tenants of rights and owners and managers of rights and obligations. o Westbrook Housing has mailed documentation to both Public Housing Tenants and Section 8 participants and owners. o Westbrook Housing posts information pertaining to VAWA in the lobby of all Westbrook Housing properties.</p>
C.	<p>Other Document and/or Certification Requirements.</p>
C.1	<p>Significant Amendment or Modification. Provide a statement on the criteria used for determining a significant amendment or modification to the 5-Year Plan.</p> <p>Significant amendments or modifications to the 5-Year Plan or subsequent Annual Plans are defined as discretionary changes in the plans or policy of the Housing Authority that fundamentally change the plans of the agency, and which require formal approval of the Board of Commissioners</p>
C.2	<p>Resident Advisory Board (RAB) Comments.</p> <p>(a) Did the RAB(s) have comments to the 5-Year PHA Plan? Y <input type="checkbox"/> N <input checked="" type="checkbox"/></p> <p>(b) If yes, comments must be submitted by the PHA as an attachment to the 5-Year PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations</p>
C.3	<p>Certification by State or Local Officials.</p> <p>Form HUD-50077-SL, Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
C.4	<p>Required Submission for HUD FO Review.</p> <p>(a) Did the public challenge any elements of the Plan? Y <input type="checkbox"/> N <input checked="" type="checkbox"/></p> <p>(b) If yes, include Challenged Elements.</p>
D.	<p>Affirmatively Furthering Fair Housing (AFFH).</p>
D.1	<p>Affirmatively Furthering Fair Housing. (Non-qualified PHAs are only required to complete this section on the Annual PHA Plan. All qualified PHAs must complete this section.)</p> <p>Provide a statement of the PHA's strategies and actions to achieve fair housing goals outlined in an accepted Assessment of Fair Housing (AFH) consistent with 24 CFR § 5.154(d)(5). Use the chart provided below. (PHAs should add as many goals as necessary to overcome fair housing issues and contributing factors.) Until such time as the PHA is required to submit an AFH, the PHA is not obligated to complete this chart. The PHA will fulfill, nevertheless, the requirements at 24 CFR § 903.7(o) enacted prior to August 17, 2015. See Instructions for further detail on completing this item.</p>

Fair Housing Goal: Continue addressing impediments in the 2023 Cumberland County Analysis of Impediments to Fair Housing Choice through the HCV program and the construction additional affordable housing units.

Describe fair housing strategies and actions to achieve the goal

Continue to train Housing Authority (HA) Staff to follow AFH guidelines and all applicable state and federal laws and regulations to eliminate all barriers to all person in accessing or sustaining safe and decent housing. Monitor HA staff implantation and application of Fair Housing access for all persons seeking Housing Authority Assistance. Investigate and report to HUD Boston Field Office and HUD HQ reports of violations of Fair Housing. Continue to collaborate with Maine Association of Public Housing Authority Directors Association to support bills in the Maine Legislature that removes the impediment of HCV holders being denied access to rental units because they will have their rent subsidized with the HCV. Increase Affordable Housing Supply to further reduce barriers to access decent, safe, affordable, and equitable housing. Will fully implement AFFH changes and requirements per the requirements of Congress and HUD as AFFH is adopted and implemented by HUD.

Form identification: ME015-The Housing Authority of the City of Westbrook form HUD-50075-5Y (Form ID - 421) printed by Christopher LaRoche in HUD Secure Systems/Public Housing Portal at 07/03/2024 03:05PM EST

Attachment to B.3 Progress Report

Progress Report of Goals identified in the FY2020 – 2024 5-Year Plan

Westbrook Housing Authority's progress in meeting its Mission and Goals described in its 5-Year PHA Plan for Fiscal Years 2020-2024

1. Goal: Maintain 100% utilization of HCV program, including Mainstream NED, VASH.

Update: FY 2024 will see a reduction to 95% utilization due to HUD imposed restriction of leasing up vouchers due to HA budget shortfall and pending HUS Set a Side funding. FYE 2023 resulted in a 99.56% HCV Voucher utilization rate, 81.77% utilization of MS-811 & 5 Year Mainstream NED Vouchers combined, Note the MS-811/5-year Mainstream/NED utilization rate increase from the previous year due to the timing of lease up of additional award of vouchers that were accounted for but could not be leased due low vacancy rate in the MSA. FYE 2022 99.5% HCV utilization rate. FYE 2021 99% HCV utilization rate; FYE 2020 99%+ utilization rate.

2. Goal: Apply for additional HCV vouchers such as HCV, Mainstream, NED, VASH, FUP

Update: FY19 responded to NOFA and applied for 50 Mainstream 811 vouchers and awarded 35 vouchers. Awarded 18 Mainstream 811 vouchers through CARES Act and applied for and awarded additional 40 MS-811 vouchers if NOFA is issued in 2020. WHA responded to a NOFA in 2022 and did not receive an award for this submission.

3. Goal: Maintain and expand Family Self Sufficiency (FSS) program.

Update: The FSS program had 26 persons enrolled on December 31, 2022, and in 2023 has 27 enrolled.

4. Goal: Project base the maximum number of Housing Choice Vouchers allowed by HUD regulations.

Update: The Housing Authority had previously fully utilized its project-based voucher capacity under HOTMA. Due to being issued 118 additional MS-811 vouchers it is possible that an additional 35 – 54 project-based vouchers could be issued. The Housing Authority will submit its determination to HUD and will look to project base for any additional vouchers for eligible projects. As of July 1, 2023, the Housing Authority has not applied for HUD determination, nor has it issued an RFP for Project Based Vouchers.

5. Goal: Apply for Project Based Voucher programs such as HUD 202 or HUD 811 programs.

Update: The PHA did not respond to the FY19 or the FY20 HUD 202 NOFA due to project timing. The Housing Authority will respond to any future NOFAs for 202 Housing and 811 Housing as projects are identified.

6. Goal: Administer HUD-RAD project-based vouchers

Updated: Achieved – administering 83 HUD-RAD project-based vouchers at the Riverview Terrace RAD development.

7. Goal: Partner with other agencies, especially the Portland Continuum of Care and Veterans Administration local contracted providers, to administer or deliver HUD or other federal agencies housing or supportive service programs.

Update: WHA has entered into a MOU with Preble Street Shelters Inc. to target and re-house youth ages 18 -24 who graduate from their housing youth program. Also, WHA and Preble Street Shelters Inc., in September of 2022, entered into a MOU to target re-housing of homeless.

8. Goal: Increase supportive services to homeless, veterans, families, and the elderly by applying for and administering outreach and supportive service grants programs issued by HUD or other federal and or state agencies.

Update: Harnois project-based development construction completed with 13 units set aside for homeless. Hired a Licensed Clinical Social Worker. In April of 2020, Acquired Congregate Care Services Program from Southern Maine Area on Aging at Larrabee Village and hired 20 supportive services staff members. Received grant funding and supported with Housing Authority business income to provide meals to shelter in place residents during COVID-19 pandemic. Established MOU with the University of New England to provide onsite medical education and support with the use of their teaching curriculum as the HA will become a site based in service component of the UNE education. In addition, UNE will be providing tele-health research and services to WHA elderly residents. All the UNE related services are provided at no fee to residents with the exception of certain dental fees that are Medicare paid. This program is in place in 2022 with some COVID-19 restrictions. In 2021-2022 and in 2022-2023 over 600 low-income elderly residents were provided services and over 200 UNE students participated in placed based learning. The UNE collaboration received a NAHRO Award of Excellence for this program in April of 2023.

9. Goal: Singularly as the Housing Authority or in partnership with HUD Community Housing Development Organization, develop through new construction or acquisition & rehabilitation, additional affordable housing developments with the use of federal, state, local, or private funding such as the Low-Income Housing Tax Credit program, the Housing Trust Fund, HUD 202, HUD 811, Federal Home Loan Bank Affordable Housing Program, or any other available funding source.

Update: Robert L. Harnois Apartments – 61 units, elderly age 62 and over, construction completed with full occupancy in March 2021. Lewis H. Emery Apartments – 30 units for elderly age 55+ scheduled completed in October of 2021 and fully leased in December of 2021. Development activities for a 60-unit 55+ development and a 55-unit 55+ development have commenced with construction of each development started in July of 2023, completion in fall of 2024, with a 2024 or 2025 lease up. Predevelopment activities for a potential 100 units of family housing is in process for a potential 2026 construction start. This development has been delayed due to resistance from the City Administration, but it is hopeful that by the fall of 2024 the HA will be able to move this project forward in the Planning Board process. The completion of pre-development activities and submission of funding applications to Maine Housing for four developments inclusive of two 36-unit age 55+ apartment buildings in the City of Westbrook and one 36-unit family and one 36-unit age 55+ buildings in the City of Biddeford. All these developments will be funded with the Low-Income Housing Tax Credit Program (LIHTC) and will be a combination of apartments targeting households at or below 60% Area Median Income as defined by the LIHTC program and market rate apartments. The Housing Authority in partnership with Westbrook Development Corporation a HUD Community Housing Development Organization will respond to any HCV RFPs for these projects and will respond to HUD 202 or 811 funding NOFAs for these projects. A \$535,000 and \$565,000 ARPA award were received for the 55 unit and the 60-unit elderly low-income apartment developments. In addition The HA with WDC submitted plans to the Town of Cumberland for 107 units inclusive of 60 units family and 47 units age 55+, but was voted down 2 to 1 by public referendum; also submitted to the town of Falmouth in response to RFP 80 units of family and age 55+ affordable housing and was not selected; also submitted response to City of Westbrook RFQ for 80 units of elderly housing but not selected.

10. Goal: Continue to manage Housing Authority owned and non-Housing Authority owned properties whether it does or does not have a controlling interest.

Updated: Achieved and forward-looking continued goal. Note, the aggregate occupancy rate is 98.5%

11. Goal: Develop and apply for innovative PILOT programs that target supportive services for the elderly, disabled, and families with an emphasis on maintaining healthy lifestyles through access to medical support and preventative medicine.

Update: Achieved to date includes obtaining grants for a MOU collaborative between the Housing Authority and the University of New England (UNE) to have a tele health initiative to include multiple disciplines of the various UNE medical schools plus tele health research initiative. Program launched in 2021. This program received a NAHRO Award of Excellence in April of 2023

12. Goal: Prioritize project-based vouchers for non-elderly disabled head of household and elderly households.

Update: This goal is restricted by the limitations of HOTMA. The HA has 118 new MS-811 vouchers issued and as a result will seek to project base the estimated maximum vouchers. The Housing Authority has applied for additional MS-811 vouchers in 2022 but did not receive an additional award.

13. Goal: Conduct Final Accounting of former Public Housing Assets as a result of HUD Rental Assistance Demonstration (RAD) and assure proper removal from Deed of Trust and proper positioning of all assets funded through federal program funds.

Update: Goal achieved with the Board of Commissioners closing out the development in January of 2020 and final project reporting submitted to HUD for removal of the AMP from the HUD ACC. HUD issued Letter and removed Public Housing from ACC in January of 2021

ADMINISTRATIVE PLAN
FOR THE
HOUSING CHOICE VOUCHER PROGRAM

Product # 301-002

January 1, 2005

Revision Date	Revision Date
September 1, 2005	October 1, 2014
May 1, 2006	October 1, 2015
December 1, 2006	March 1, 2016
July 1, 2007	March 1, 2017
August 1, 2008	July 1, 2017
November 1, 2008	July 1, 2018
October 1, 2009	June 1, 2019
August 1, 2010	April 1, 2020
May 1, 2011	March 1, 2021
April 1, 2012	April 1, 2022
April 1, 2013	September 1, 2023
May 1, 2014	January 1, 2024



1810 Gillespie Way, Suite 202
El Cajon, CA 92020
800.783.3100
www.nanmckay.com

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HCV ADMINISTRATIVE PLAN

2024

Westbrook Housing



HCV Administrative Plan

WESTBROOK HOUSING

Approved by the HA Board of Commissioners: April 25, 2024

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Introduction

ABOUT THE ADMINISTRATIVE PLAN

REFERENCES CITED IN THE ADMINISTRATIVE PLAN

The authority for PHA policies is derived from many sources. Primary among these sources are federal statutes, federal regulations, and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. Industry practice may also be used to develop policy as long as it does not conflict with federal requirements or prohibitions.

HUD

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

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

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

State Law

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

Industry Practice

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

RESOURCES CITED IN THE ADMINISTRATIVE PLAN

The administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the administrative plan may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the administrative plan or that may be helpful to you.

HUD HCV Guidebook

In November 2019 HUD began issuing a new version of the HCV Guidebook chapter-by-chapter. Unlike the previous version of the HCV Guidebook in which chapters were numbered, the new version of the guidebook includes chapter names, but no numbers. As the new version of the guidebook has not yet been fully released, and since the previous version of the guidebook contains guidance not found in the new version, the policy cites both versions of the guidebook. Therefore, where the HCV Guidebook is cited in the policy, the citation will make a distinction between the “old” and “new” versions of the guidebook. The “old” version of the guidebook will continue to be cited as *HCV GB* with a chapter/page reference (example: HCV GB, p. 5-4). If HUD has also released a new chapter on the same topic with information that either adds new information or updates existing information from the previous guidebook, the new guidebook will be cited as *New HCV GB* with a chapter title and page reference (example: *New HCV GB, Payment Standards*, p. 11). On September 29, 2023, HUD issued Notice PIH 2023-27 to implement sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The notice supersedes relevant portions of the guidebook, specifically the chapters on eligibility, denials, and annual reexaminations and interim reexaminations. Where chapters have not been altered by the HOTMA implementation notice, the model policy continues to cite the HCV Guidebook.

Abbreviations

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

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

Resources and Where to Find Them

The HUD website is <https://www.hud.gov/>.

Guidebooks, handbooks, and other HUD resources may be found at the HUDClips website: https://www.hud.gov/program_offices/administration/hudclips.

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

Document and Location
Code of Federal Regulations https://www.ecfr.gov/
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF
Executive Order 11063 https://www.archives.gov/federal-register/codification/executive-order/11063.html
Federal Register https://www.federalregister.gov/
Housing Choice Voucher Program Guidebook (7420.10G), Updated Chapters https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook
HOTMA Final Rule https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&utm_source=federalregister.gov&utm_medium=email
HOTMA Implementation Notice, PIH 2023-27 https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice https://www.hud.gov/sites/documents/DOC_8993.PDF
Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF
VAWA Resources https://www.hud.gov/vawa

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The PHA receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The PHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The PHA enters into an Annual Contributions Contract (ACC) 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.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.

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

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

PART I: THE PHA

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF THE PHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by **Westbrook Housing** for the jurisdiction of **the City of Westbrook and a 10-mile radius in the Counties of Cumberland and York**.

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

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

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

1-I.C. PHA MISSION

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

PHA Policy

Westbrook Housing provides opportunities for affordable quality housing to assist individuals and families and to encourage independence within a supportive community.

1-I.D. THE PHA'S PROGRAMS

The following programs are included under this administrative plan:

PHA Policy

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

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

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

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

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

PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

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

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the reader to better understand the program.

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

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

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

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

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

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

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

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

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

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

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

1-II.B. HCV PROGRAM BASICS

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

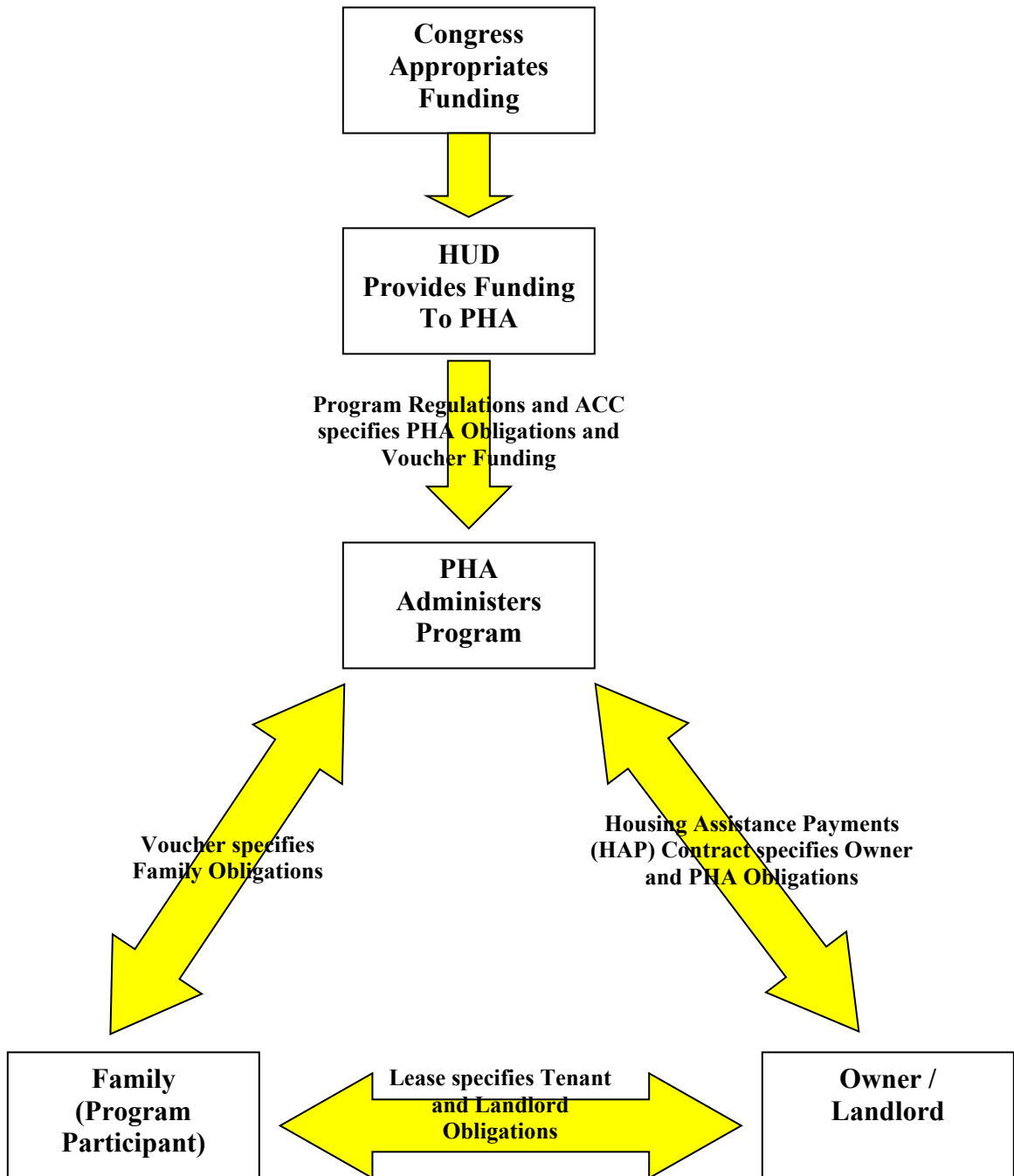
1-II.C. THE HCV PARTNERSHIPS

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

For the HCV program to work and be successful, all parties involved – HUD, the 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.

The HCV Relationships:



What Does HUD Do?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- 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 to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue vouchers to eligible families and provide information on how to lease a unit;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the ACC, 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 suitability as renters.
 - 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 do not discriminate against anyone;
- Maintain the housing unit in accordance with National Standards for the Physical Inspection of Real Estate (NSPIRE) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What Does the Family Do?

The family has the following responsibilities:

- Provide the PHA with complete and accurate information as determined by the PHA to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing;
- Attend all appointments scheduled by the 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 terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

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

PART III: THE HCV ADMINISTRATIVE PLAN

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

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

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

The 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 regulations as well as all federal, state and local fair housing laws and regulations.

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

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

- Selection and admission of applicants from the 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 of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);

- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards, including policies on administering decreases in the payment standard during the HAP contract term (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the 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);
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3);
- Policies governing the project-basing of vouchers in both the standard Project-Based Voucher (PBV) program (Chapter 17) and the RAD Project-Based Voucher program (Chapter 18); and
- Special policies governing any special purpose vouchers issued by the PHA (Chapter 19).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

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

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

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

1-III.C. ORGANIZATION OF THE PLAN

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

1-III.D. UPDATING AND REVISING THE PLAN

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

PHA Policy

The PHA will review and update the plan as needed, to reflect changes in regulations, PHA operations, or when needed to ensure staff consistency in operation.

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 PHA's 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 (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

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

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

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

- 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 Orders 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Act (VAWA)

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

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

PHA Policy

State of Maine law prohibits discrimination in housing on the basis of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin, and familial status.

2-I.B. NONDISCRIMINATION

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

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

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

The PHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12; Executive Order 13988].

PHA Policy

The PHA does not identify any additional protected classes.

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
- Subject anyone to sexual harassment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

Providing Information to Families and Owners

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

2-I.C. DISCRIMINATION COMPLAINTS

General Housing Discrimination Complaints

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

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

PHA Policy

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

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

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

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

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

PHA Policy

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

Within 10 business days of receiving the complaint, the PHA will provide a written notice to those alleged to have violated the rule. The PHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

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

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

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

VAWA Complaint Processing [Notice FHEO 2023-01]

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

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

PHA Policy

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

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

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

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

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

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

PHA Policy

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

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

Contact information will be provided to process requests for accommodation.

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

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

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

Types of Reasonable Accommodations

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

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the 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 PHA staff

2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the 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 connection, or nexus, between the requested accommodation and the individual's disability.

PHA Policy

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

2-II.D. VERIFICATION OF DISABILITY

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

Before providing an accommodation, the 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 records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

The 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 overall size of the PHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the 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.

PHA Policy

After a request for an accommodation is presented, the PHA will verify the need with a medical professional of the family's choice.

If the PHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the PHA's decision through an informal review (if applicable) or informal hearing (see Chapter 16).

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

2-II.F. 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.

PHA Policy

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The 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 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination 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 must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the 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 and may require that the unit be restored to its original state at the family's expense when the family moves.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

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

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

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

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

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

2-III.A. OVERVIEW

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

The 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.

2-III.B. ORAL INTERPRETATION

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

PHA Policy

The PHA will utilize a language line for telephone interpreter services.

When exercising the option to conduct remote briefings, informal reviews, or hearings, however, the PHA will coordinate with a remote interpretation service which, when available, uses video conferencing technology rather than voice-only interpretation.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the PHA. The PHA, at its discretion, may choose to use the language services even when LEP persons desire to use an interpreter of their choosing. The interpreter may be a family member or friend. If the interpreter chosen by the family is a minor, the PHA will not rely on the minor to serve as the interpreter.

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

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

2-III.C. WRITTEN TRANSLATION

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

PHA Policy

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

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

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

2-III.D. IMPLEMENTATION PLAN

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

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

PHA Policy

The PHA has developed a written LEP plan that includes the following five steps: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

Chapter 3

ELIGIBILITY

INTRODUCTION

The 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.
 - Provide social security number information for household members as required.
 - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
 - Not currently be receiving a duplicative subsidy.
 - Meet net asset and property ownership restriction requirements.
- 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.

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 as well as the asset limitation for HCV.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

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

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

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 actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or a group of persons residing together. Such group includes but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, and the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

Gender Identity means actual or perceived gender characteristics.

Sexual orientation means homosexuality, heterosexuality, or bisexuality.

PHA Policy

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

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

Household

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.

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

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

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see section 16-IX.D of this plan.)
- In accordance with Notice PIH 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator’s HUD–VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator’s HUD–VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD–VASH voucher, which must be issued to another eligible family upon the voucher’s turnover.
- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court’s determination of which family members continue to receive assistance.

PHA Policy

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

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

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

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

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

PHA 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.

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

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

Spouse means the marriage partner of the head of household.

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

PHA Policy

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

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

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

A *minor* is a member of the family, other than the head of family or spouse, who is under 18 years of age.

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

Joint Custody of Dependents

PHA 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 50 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 PHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

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

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

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

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

Elderly Persons

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

Near-Elderly Persons

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

Elderly Family

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

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

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the 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 cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

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

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

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

PHA Policy

A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.

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

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

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

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

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

PHA Policy

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

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

PHA Policy

A temporary absence is less than 30 days, consecutive or not consecutive:

Westbrook Housing will not require prior written notification for temporary absences from the unit.

The voucher holder will pay their portion of the rent during this absence without modification of income due to the absence.

Extended absence is 30 days or more in a 45-day period, consecutive or not consecutive:

Westbrook Housing will require prior written notification for extended absences from the unit.

The voucher holder will pay their portion of the rent during this absence without modification of income due to the absence.

On a case by case basis, extended absences may be granted for participation in drug treatment programs, or in-patient health facilities where an acceptable form of verification is provided.

No extended absences will be granted for imprisonment.

Any member of the household will be considered permanently absent if they are away from the unit for 60 days (consecutive or not consecutive) in a 12-month period except as otherwise provided in this chapter.

Absent Students

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

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

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

PHA Policy

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

Absent Head, Spouse, or Cohead

PHA Policy

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

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

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

PHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

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

Return of Permanently Absent Family Members

PHA Policy

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

3-I.M. LIVE-IN AIDE

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

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

The income of a live-in aide is not counted in the calculation of annual income for the family [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not *family* members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

PHA Policy

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

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

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

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

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

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

The PHA will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

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

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Using Income Limits for Eligibility [24 CFR 982.201 and Notice PIH 2023-27]

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

- A *very low-income* family
- A *low-income* family that has been “continuously assisted” under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4; 24 CFR 982.201(b)]

PHA Policy

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

- 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.

PHA Policy

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

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the 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 counted for income targeting purposes.

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

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the 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 noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

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

PHA Policy

Family members who declare U.S. citizenship or national status will be required to provide additional documentation if they indicate they were not born in the United States.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen 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 noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The 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 noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

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

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

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

PHA Policy

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

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

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

PHA Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]

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

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

The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.232; HCV GB, p. 5-13]

HUD requires that each adult family member, and the head of household, spouse, or cohead, regardless of age, sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements. The consent form remains effective until the family is denied assistance, assistance is terminated, or the family provides written notification to revoke consent.

The 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) and 24 CFR 5.232(a)].

However, this does not apply if the applicant or participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)]

PHA Policy

The PHA has established a policy that revocation of consent to access financial records will result in denial of admission.

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

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

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

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

Definitions

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

Dependent Child

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

Independent Student

PHA Policy

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

The individual is of legal contract age under state law.

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

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

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence

The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes

The individual is a graduate or professional student

The individual is married

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

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

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

A financial aid administrator

The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

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

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

If the PHA determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance.

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

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

PHA Policy

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

Person with Disabilities

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

Veteran

PHA Policy

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

Vulnerable Youth

PHA Policy

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

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

A financial aid administrator

Determining Student Eligibility

If a student is applying for assistance on their own, apart from their parents, the 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, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from their 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.

PHA Policy

For any student who is subject to the 5.612 restrictions, the PHA 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 their 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, the 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 16-III.B.

Determining Parental Income Eligibility

PHA 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, the PHA will obtain an income declaration and certification of income from that parent.

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

If the student has been living with one of their parents and has not had contact with or does not know where to contact their other parent, the 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.

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

Existing Tenant Search

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

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

PHA Policy

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

Debts Owed to PHAs and Terminations

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program, the PHA must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact the PHA directly in writing to dispute the information and provide any documentation that supports the dispute. If the PHA determines that the disputed information is incorrect, the PHA will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

PHA Policy

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

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

Income Report

For each new admission, the PHA is required to review income information in EIV to confirm and validate family reported income within 120 days after the admission information is transmitted to HUD. The PHA must print and maintain copies of the reports in the tenant file and resolve any discrepancies with the family.

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

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

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

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

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

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

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

Denial of assistance includes any of the following:

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

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

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

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

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

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

- Any member of the household has been evicted from federally assisted housing in the last three 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).

PHA Policy

The PHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity if the PHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PHA, 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.

PHA Policy

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

PHA Policy

In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A record or records of arrest will not be used as the sole basis of determining reasonable cause. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

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

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

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

First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).

Second, the family has real property (as defined under state law in which the property is located) that is suitable for occupancy by the family as a residence and the family has:

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

The PHA does not have the discretion not to enforce or provide limited enforcement of the asset limitation at admission. However, the real property restriction does not apply in the following circumstances:

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

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

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

PHA Policy

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

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

PHA Policy

In general, the PHA defines a *geographic hardship* to include when a family members' work, school, health care provider, or other necessary service is located an unreasonable distance from the real property or there is a lack of adequate transportation options for the family to access work, school, health care, or other necessary services. The PHA will consider circumstantial details a family faces when determining whether a geographical hardship is present.

- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

If a family meets one of the above exceptions, the real property is not automatically excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets as described in 24 CFR 5.603 and Chapter 6 of this policy, it will be included in net family assets. If the value of that real property brings the net family assets above \$100,000 (as adjusted for inflation), the family is out of compliance with the asset limitation.

See Chapter 7 for information on verifying net family assets for purposes of the asset limitation.

3-III.D. 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 is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

PHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three 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;

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

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

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

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

Any conviction for drug-related or violent criminal activity within the past three years.

Records of arrests for drug-related or violent criminal activity within the past three years, although a record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

In making its decision to deny assistance, the PHA will consider the factors discussed in Section 3-III.F and 3-III.G. Upon consideration of such factors, the PHA 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.

PHAs are not permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [24 CFR 984.101(d)].

PHA Policy

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

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

The family does not provide complete and true information to the PHA.

Any family member has been evicted from federally assisted housing in the last three years.

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

The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

If the family has not reimbursed any 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 PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

When denying admission due to family debts as shown in HUD's EIV system, the PHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.

If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PHA to support the family's claim. The PHA will consider the information provided by the family prior to issuing a notice of denial.

A family member has engaged in or threatened violent or abusive behavior toward PHA 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 PHA will consider the factors discussed in Section 3-III.F and 3-III.G. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

3-III.E. 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].

PHA Policy

The PHA will perform the following criminal background screenings for all adult household members:

Maine State Bureau of Identification (SBI)

Maine Sex Offender Registry

If an applicant indicates that they have lived in another state, a national criminal check will be performed through:

Tenant PI

While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose.

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)].

PHA Policy

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

Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If the 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 has the authority to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

PHA Policy

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

The owner is responsible for screening and selection of the family to occupy the owner's unit. The 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.

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

PHA Policy

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

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

Evidence [24 CFR 982.553(c)]

PHA Policy

The PHA 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 mandatory (see Section 3-III.B).

PHA Policy

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

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

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

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

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

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

- Any statements made by witnesses or the applicant not included in the police report

- Whether criminal charges were filed

- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

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

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

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

Removal of a Family Member's Name from the Application

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

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

PHA Policy

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

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

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

3-III.G. NOTICE OF ELIGIBILITY OR DENIAL

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

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

PHA Policy

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

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

PHA Policy

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

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

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

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

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

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

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

Notification

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

PHA Policy

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

While the PHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant may inform the PHA that their status as a victim is directly related to the grounds for the denial. The PHA will request that the applicant provide enough information to the PHA to allow the PHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

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

Documentation

Victim Documentation [24 CFR 5.2007]

PHA Policy

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

Perpetrator Documentation

PHA Policy

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

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to their belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) In General

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

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

(B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

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

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

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

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

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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

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

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

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

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

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

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

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

- (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
 - (B) Advisory panel
 - (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
 - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
 - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
 - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
 - (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
 - (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
 - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

- (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
 - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
 - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

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

(c) Postsecondary vocational institution.

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

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the 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 clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the 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 be in compliance 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

4-I.A. OVERVIEW

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

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

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

PHA Policy

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

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

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

Applications for Westbrook Housing's Voucher Programs will be placed on the Maine Centralized Waiting List (CWL) which is owned by Affordable Housing Network, LLC. Families will be encouraged to apply online on the designated secure website; however, the family may obtain application forms from the PHA's office during normal business hours or online at Westbrook Housing's web page. Families may also request – by telephone, mail, email, or FAX – that an application be mailed to them via first class mail. CWL website: <https://www.affordablehousing.com/>

Completed applications must be returned to the PHA by mail, electronically, by fax, or submitted in person during normal business hours; or deposited in the drop box at the main office after normal business hours. Applications must be complete in order to be accepted by the PHA for processing. If an application is incomplete, the PHA will notify the family of the additional information required.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

The PHA must take 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 equal 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).

4-I.D. 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

PHA Policy

If the PHA 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 PHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

Eligible for Placement on the Waiting List

PHA Policy

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

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

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the PHA.

PART II: MANAGING THE WAITING LIST

4-II.A. 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.

4-II.B. 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;
- Date and time of application;
- Qualification for any local preference;
- 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 are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

PHA Policy

The PHA will maintain a single waiting list for the HCV program.

The PHA will maintain separate waiting lists for the PBV and RAD programs.

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.

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

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

PHA Policy

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

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

Closing the Waiting List

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

PHA Policy

The Maine Section 8/HCV Centralized Waiting List will remain open indefinitely for tenant-based HCV programs.

The PHA will leave all PBV and RAD waiting lists open indefinitely.

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, and where and when applications will be received.

PHA Policy

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

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

American Journal

4-II.D. 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 admit a specified percentage of extremely low-income families to the program (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

PHA Policy

The PHA 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.

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

PHA Policy

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

4-II.F. 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, and the PHA determines that the family did not respond 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)].

PHA Policy

The Maine Section 8/HCV Centralized Waiting List will be updated according to the terms of the contract.

When updating the PBV or RAD waiting lists, the PHA will send an update request via first class mail to families with qualifying local preferences on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the PHA 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, by email, or by fax. Responses should be postmarked or received by the PHA not later than 15 business days from the date of the PHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

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

Removal from the Waiting List

PHA Policy

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

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

PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

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

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

The 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)].

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

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

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. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

PHA Policy

The PHA administers the following types of targeted funding:

Veterans Affairs Supportive Housing (VASH)

Mainstream

Non-Elderly Disabled (NED)

Regular HCV Funding

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

4-III.C. SELECTION METHOD

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

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

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

PHA Policy

The PHA will use the following local preferences:

1. The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding.
2. **The PHA will offer a preference to any family, in good standing, living in a project-based unit, which requested a tenant-based voucher before taking names from the waiting list.**
3. **The PHA will give a preference to any family that lives or works in the PHA's jurisdiction: Westbrook, Buxton, Cape Elizabeth, Cumberland, Dayton, Falmouth, Freeport, Frye Island, Gorham, Gray, Hollis, New Gloucester, North Yarmouth, Old Orchard Beach, Pownal, Raymond, Scarborough, Standish, Windham, and Yarmouth.**
4. **Westbrook Housing has established a limited preference for chronically homeless; the agency will designate 10 vouchers for this preference. If one of these vouchers is available, it will go to the first eligible family on the list that qualifies for this preference. If there are no families on the list that qualify for the local preference of living or working in the PHA's jurisdiction then, the voucher will be offered to an applicant that qualifies as chronically homeless in conjunction with Preble Street Resource Center's programs.**

Definition of a qualifying applicant: an unaccompanied homeless individual or family with a disabling condition who has been continuously homeless for a year or more, or has had a least four (4) episodes of homelessness in the past three (3) years. To be considered chronically homeless, a person must have been sleeping in a place not meant for habitation (i.e. living on the streets) and/or been in a Portland area emergency shelter during that time.

Westbrook Housing and Preble Street Resource Center have entered into an agreement for the creation of 10 Limited Preference Vouchers for the Chronically Homeless, (thereafter "the Program").

The goal of the Program is to pair ten (10) HCV subsidies with supportive services to provide permanent supportive housing for eligible individuals.

Westbrook Housing shall provide the housing subsidies and Preble Street shall provide the supportive services. The subsidies shall be funded through the current Housing Choice Voucher ACC between Westbrook Housing and the Department of Housing and Urban Development. Preble Street shall affirmatively further Fair Housing in identifying chronically homeless who are eligible for the Limited Preference and who need supportive services provided by Preble Street.

Regulations and policies set forth in this Administrative Plan for Housing Choice Vouchers apply. The following define certain considerations for these applicants/participants given the barriers to housing that they face and the need for supportive services to gain stable and affordable housing. Westbrook Housing and Preble Street will receive releases from the applicants/participants to share information about the applicant/participant as it applies to the applicants/participants initial or continued eligibility for the Program.

Any person who claims to qualify for the preference, Chronically Homeless, must have that verified by Preble Street. The person/family must qualify for the preference at the time that their name is drawn from the waiting list.

Most HCV program screening will apply. However, Westbrook Housing may take into consideration mitigating circumstances caused by the chronic homelessness and/or disability of the applicant that, with the benefit of stable, affordable housing and other supportive services, may reduce or eliminate such behaviors or activities in the future.

Families who have applied for Project-Based Voucher units will be selected according to Chapter 17. Families who have applied for RAD units will be selected according to Chapter 18. Families who applied to the CWL and qualify for targeted funding will be selected according to Chapter 19.

The PHA will first assist families that have been terminated from the HCV program due to insufficient funding and then assist families that qualify for the VAWA preference.

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

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

PHA Policy

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

Order of Selection

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

PHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the PHA. Documentation will be maintained by the PHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the PHA does not have to ask higher placed families each time targeted selections are made.

4-III.D. NOTIFICATION OF SELECTION

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

PHA Policy

The PHA will send the applicant family an initial letter by first class mail when it is near the top of the waiting list. If the initial letter is returned to the PHA 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.

When the PHA receives a response to the initial letter; the PHA will send the family a Pre-Application Packet by first class mail.

The applicant must complete the documents enclosed in the packet along with the required documents and return it to Westbrook Housing within 10 business days of the date of the initial letter to establish the applicant'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 PHA will provide the family with a written list of items that must be submitted.

4-III.E. THE APPLICATION INTERVIEW

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2018-24].

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

PHA Policy

Families selected from the waiting list are not required to participate in an eligibility interview.

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

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

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, and must complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the PHA 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 initial request must be provided within 10 business days (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

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

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

Applicants who fail to provide the required documentation will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

4-III.F. COMPLETING THE APPLICATION PROCESS

The 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 funding admission, or selection preference that affected the order in which the family was selected from the waiting list.

PHA Policy

If the PHA determines that the family is ineligible, the PHA 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 PHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

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

Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the 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 the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the PHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and 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

5-I.A. OVERVIEW

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

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

Notification of Briefing

Prior to issuance of a voucher, 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 in individual face-to-face meetings, through group briefing sessions, or via remote briefing sessions.

PHA Policy

Families will be notified of their eligibility for assistance at the time they are invited to a briefing. The notice will be sent by first class mail and will also be sent by email if the family has provided a valid email address to the PHA.

The notice will advise the family of the type of briefing, who is required to be present at the briefing, and the date and time of the briefing. The notice will also inform the family of any additional requirements for in-person or remote briefings as addressed in relevant policy elsewhere in this section.

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

In-Person Briefings

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.

PHA Policy

In-person briefings will generally be conducted in group meetings. At the family's written request, the PHA may provide an individual briefing.

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

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

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

Attendance

PHA Policy

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

Remote Briefings [Notice PIH 2020-32]

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

PHA Policy

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

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

Accessibility Requirements for Persons with Disabilities and LEP Individuals

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

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

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances.

Limited English Proficiency (LEP) requirements also apply to remote briefings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote briefings.

Conducting Remote Briefings

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

PHA Policy

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

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

The PHA will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least five business days before the briefing. The PHA will provide a paper copy of the briefing packet upon family request, and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.

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

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

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

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;
- An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction or outside the PHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- The PHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance;
- The advantages of areas that do not have a high concentration of low-income families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

In briefing a family that includes a person with disabilities, PHA must also take steps to ensure effective communication.

Briefing Packet [24 CFR 982.301(b); New HCV GB, *Housing Search and Leasing*, p. 7]

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

- The term of the voucher, voucher suspensions, and the PHA's policies on any extensions 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.
- Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the PHA policy on providing information about families to prospective owners.
- The PHA subsidy standards including when and how exceptions are made.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides (e.g., HUD brochure entitled, "A Good Place to Live").
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form, including information on how to complete the form and file a fair housing complaint.
- A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the PHA.
- The family obligations under the program, including any obligations of a welfare-to-work family, and any obligations of other special programs if the family is participating in one of those programs.
- 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.

- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.
- The HUD pamphlet on lead-based paint entitled, “Protect Your Family from Lead in Your Home.”

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

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

Additional Items to Be Included in the Briefing Packet

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

PHA Policy

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

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

The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contain information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking

“Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

“What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12

Mainstream Resource Packet

Sexual Harassment Awareness Flyer

Eviction Information Sheet

5-I.C. FAMILY OBLIGATIONS

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

PHA Policy

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

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

Family Obligations [24 CFR 982.551]

The family obligations of the voucher are listed as follows:

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

PHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.

- The family must not commit any serious or repeated violation of the lease.

PHA Policy

The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

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

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

PHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the PHA 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 composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

PHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA 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 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.

PHA 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.

PHA 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 PHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. 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 must also establish policies related to the issuance of the voucher, to the voucher term, and to any extensions of the voucher term.

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

For each family, the 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.

PHA Policy

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

Two persons (other than head/spouse/co-head/partners) of different genders and/or generations will be allocated separate bedrooms.

Two children under the age of 7 will be allocated one bedroom regardless of gender.

Live-in aides will be allocated a separate bedroom.

Single person families will be allocated one bedroom.

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

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

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the 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)].

PHA Policy

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

The family must request any exception to the subsidy standards in writing, which will include email. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), unless the disability and the disability-related need for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

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

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

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the 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 verification of information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

PHA 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].

PHA Policy

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

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.

5-II.E. VOUCHER TERM AND EXTENSIONS

Voucher Term [24 CFR 982.303]

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

PHA Policy

The initial voucher term will be 60 calendar days.

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

The maximum term of the voucher will be 180 days, issued in 60-day increments.

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)].

PHA Policy

The PHA will approve extensions only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary due to reasons beyond the family's control, as determined by the PHA. Following is a list of extenuating circumstances that the PHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

Serious illness or death in the family

Other family emergency

Obstacles due to employment

Whether the family has already submitted requests for tenancy approval that were not approved by the PHA

Whether family size or other special circumstances make it difficult to find a suitable unit

Any request for an additional extension must include the reason(s) an additional extension is necessary. The PHA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

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

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

In the event of a local, regional, State or National crises or emergency declaration, the voucher may be extended up to 365 days (one year), in 60-day increments.

In order to utilize our funding to provide the maximum assistance possible, the PHA will not consider any extension beyond a 365-day (one year) period as reasonable.

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

The PHA must provide for suspension of the initial or any extended term of the voucher from the date the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

Expiration of Voucher Term

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the PHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

PHA Policy

If an applicant family's voucher term or extension expires before the PHA has approved a tenancy, the PHA will require the family to reapply for assistance.

Within 10 business days after the expiration of the voucher term or any extension, the PHA will notify the family in writing that the voucher term has expired and that the family must reapply when the waiting list is open in order to be placed on the waiting list.

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 which are excluded from the family's annual income. These requirements and PHA policies for calculating annual income are found in Part I.

Part II: Assets. HUD regulations specify the types of assets which are excluded from a family's annual income. These requirements and PHA policies for calculating income from assets are found in Part II.

Part III: Adjusted Income. Once annual income has been established, HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies and allow the PHA to adopt additional permissive deductions. These requirements and PHA policies for calculating adjusted income are found in Part III.

Part IV: 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

6-I.A. OVERVIEW [24 CFR 5.609]

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources (other than those specifically excluded in 24 CFR 5.609(b)) by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income (other than those sources specifically excluded in 24 CFR 5.609(b)) by or on behalf of each dependent who is under 18 years of age; and
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. However, when a family member’s wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, the PHA must use the gross amount of the income, prior to the reduction, to determine a family’s annual income [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-2)
- The Effect of Welfare Benefit Reduction (Exhibit 6-3)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. Verification requirements for annual income are discussed in Chapter 7.

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Overview

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition in accordance with HUD regulations and PHA policies in Chapter 11. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)]. All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All sources of unearned income, except those specifically excluded by the regulations, are included.

Temporarily Absent Family Members

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.

PHA Policy

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

A temporary absence is less than 30 days, consecutive or not consecutive:

Westbrook Housing will not require prior written notification for temporary absences from the unit.

The voucher holder will pay their portion of the rent during this absence without modification of income due to the absence.

Extended absence is 30 days or more in a 45-day period, consecutive or not consecutive:

Westbrook Housing will require prior written notification for extended absences from the unit.

The voucher holder will pay their portion of the rent during this absence without modification of income due to the absence.

On a case-by-case basis, extended absences may be granted for participation in drug treatment programs, or in-patient health facilities where an acceptable form of verification is provided.

No extended absences will be granted for imprisonment.

Any member of the household will be considered permanently absent if they are away from the unit for 60 days (consecutive or not consecutive) in a 12-month period except as otherwise provided in this chapter.

Absent Students

PHA 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 PHA indicating that the student has established a separate household, or the family declares that the student has established a separate household.

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

PHA Policy

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency

confirms that the child has been permanently removed from the home, the child will continue to be counted as a family member.

Absent Head, Spouse, or Cohead

PHA Policy

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

Family Members Permanently Confined for Medical Reasons

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

PHA Policy

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

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

Joint Custody of Dependents

PHA 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 50 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 PHA will make the determination based on available documents such as court orders, school records, or an IRS return showing which family has claimed the child for income tax purposes.

Caretakers for a Child

PHA Policy

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

6-I.C. CALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

Anticipating Annual Income [24 CFR 5.609(c)(1)]

At initial occupancy and for an interim reexamination of family income, the PHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date. Policies related to verifying income are found in Chapter 7.

PHA Policy

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family's anticipated income.

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

Known Changes in Income

If the PHA verifies an upcoming increase or decrease in income at admission or interim reexamination, annual income will be projected by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the new admission or interim reexamination. In such a case the PHA would calculate annual income as follows: $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$.

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then, should the change in income require the PHA to conduct an interim reexamination, conduct an interim reexamination in accordance with PHA policy in Chapter 11.

**Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2);
Notice PIH 2023-27]**

At annual reexamination, except where the PHA uses a streamlined income determination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PHA policies in Chapter 11 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11.

6-I.D. EARNED INCOME

Wages and Related Compensation [24 CFR 5.609(a); Notice PIH 2023-27]

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)]. Income earned as a day laborer is not considered nonrecurring income.

A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27]. Income earned as a seasonal worker is not considered nonrecurring income.

PHA Policy

The PHA will include in annual income the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or interim reexamination. If only a one-year history is available, the PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

Earnings of a Minor [24 CFR 5.609(b)(3)]

A minor is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors is not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included.

Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

**6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES
[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16;
Notice PIH 2023-27]**

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the PHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

Calculation Method

Initial 12-Month Exclusion

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

PHA Policy

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

Second 12-Month Exclusion

During the second exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

PHA Policy

During the second 12-month exclusion period, the PHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

6-I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(28); Notice PIH 2023-27]

Annual income includes “net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

Expenditures for business expansion or amortization of capital indebtedness may 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.”

PHA Policy

To determine business expenses that may be deducted from gross income, the PHA 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 herein.

Independent Contractors

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)]. This may include individuals such as third-party delivery and transportation service providers and “gig workers” like babysitters, landscapers, rideshare drivers, and house cleaners. Income earned as an independent contractor is not considered nonrecurring income.

Business Expansion

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

PHA 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.

PHA 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 PHA 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.

PHA 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 PHA 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

PHA 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 Owned by a Business Entity

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and Notice PIH 2023-27]

Introduction

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations.

For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).

While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills.

- For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. The PHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below.
- During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

Pre-HOTMA Section 8 Student Financial Assistance Limitation [FR 4/10/06; Notice PIH 2015-21]

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

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

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

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

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

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
 - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
 - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
 - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
 - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
 - Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

Any student financial assistance not subject to inclusion under the regulations is fully excluded from annual income, whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

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

HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students.

Types of Assistance

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
 - The Higher Education Tribal Grant
 - The Tribally Controlled Colleges or Universities Grant Program

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education (not otherwise excluded by the Federally mandated income exclusions) are excluded [24 CFR 5.609(b)(9)(ii)]. Other student financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is not excluded from income.

Actual covered costs are defined as the actual costs of:

- Tuition, books, and supplies;
 - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the PHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27]

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

PHA Policy

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the PHA will exclude the full amount of the assistance received under Title IV from the family's annual income. The PHA will not calculate actual covered costs in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the PHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The PHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The PHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

Example 1

- Actual covered costs: \$20,000
- Other student financial assistance: \$25,000
- Excluded income: \$20,000 (\$25,000 in financial assistance - \$20,000 in actual covered costs)
- Included income: \$5,000

When a student receives assistance from both Title IV of the HEA and from other sources, the PHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

Example 2

- Actual covered costs: \$25,000
- Title IV HEA assistance: \$26,000
- Title IV HEA assistance covers the students entire actual covered costs.
- Other Student Financial Assistance: \$5,000
- Excluded income: The entire Title IV HEA assistance of \$26,000
- Included income: All other financial assistance of \$5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the PHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

Example 3

- Actual covered costs: \$22,000
- Title IV HEA assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$7,000 (\$22,000 in actual covered costs - \$15,000 in Title IV HEA assistance).
- Other Student Financial Assistance: \$5,000
- \$7,000 in remaining actual covered costs - \$5,000 in other financial assistance
- Excluded income: \$15,000 entire amount of the Title IV HEA Assistance + \$5,000 in other financial assistance
- Included income: \$0

Example 4

- Actual covered costs: \$18,000
- Title IV HEA Assistance: \$15,000
- The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000 in Title IV HEA Assistance)
- Other student Financial Assistance: \$5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000 (\$3,000 in actual covered costs - \$5,000 in other financial assistance).
- Included income: \$2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis.

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. If unemployment income will not be repeated beyond the coming year, then it is excluded. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

PHA Policy

The PHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the PHA is processing an annual reexamination, the PHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the PHA is processing an annual reexamination, then the PHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PHA will conduct an interim in accordance with PHA policies in Chapter 11. If not, the PHA will consider the amount when processing the family's next annual recertification.

Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

Social Security Benefits [Notice PIH 2018-24]

The PHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the PHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

PHA Policy

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the PHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

Alimony and Child Support

PHA Policy

The PHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The PHA will count court-awarded amounts for alimony and child support unless the family certifies and the PHA verifies that the payments are not being made.

In order to verify that payments are not being made, the PHA will review child support payments over the last three months.

If payments are being made regularly, the PHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, the PHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the PHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If the PHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the PHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, the PHA will not include alimony or child support in annual income.

6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24) and Notice PIH 2023-27]

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to such non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income. However, the value of regular in-kind donations (such as the value of groceries) received by friends and family are included.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

6-I.J. WELFARE ASSISTANCE

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.

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

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

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 provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

Offsets

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

6-I.K. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

6-I.L. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the PHA or owner chooses not to conduct the examination.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b); FR Notice 1/31/2024]

Other exclusions contained in 24 CFR 5.609(b) and FR Notice 1/31/24 that have not been discussed earlier in this chapter include the following:

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].

- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(i)(12)(ii)].
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.609 I(12)(ii)].

Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

PHA Policy

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

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

End of participation in a training program must be reported in accordance with the PHA’s interim reporting requirements (see Chapter 11).

- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(b)(13)].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].
- Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on January 31, 2014. 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)). This exclusion also applies to assets.
- (b) Benefits under Section 1780 of the Richard B. Russell School Lunch Act and Child Nutrition Act of 1966, including WIC and reduced-price lunches.
- (c) Payments, including for supportive services and reimbursement of out-of-pocket expenses, to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058). The exclusion also applies to assets.
 - Except, the exclusion does not apply when the Chief Executive Officer of the Corporation for National and Community Service determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)).
- (d) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c)).
- (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 5506).
- (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f)(1)).
- (g) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 which was reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).
- (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts.
- (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Section 6).
- (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b)).
- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010.
- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407-1408).

- (m) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).
- (n) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.). This exclusion also applies to assets.
- (o) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean and Thailand service veterans born with spinal bifida (42 U.S.C. 12637(d)).
- (p) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721). This exclusion also applies to assets.
- (q) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1990 (42 U.S.C. 9858q).
- (r) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)). This exclusion also applies to assets.
- (s) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433) This exclusion also applies to assets.
- (t) Amounts of student financial assistance funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, only, 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 be considered income if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327 (as amended)).
- (u) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).
- (v) Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)).
- (w) Any amounts in an “individual development account” are excluded from assets and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).
- (x) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by

states, local governments, and disaster assistance organizations. This exclusion also applies to assets.

- (y) Distributions from an ABLÉ account, distributions from and certain contributions to an ABLÉ account established under the ABLÉ Act of 2014 (Pub. L. 113–295.), as described in Notice PIH 2019–09 or subsequent or superseding notice is excluded from income and assets.
- (z) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409).
- (aa) Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021.
- (ab) Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013-1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first \$2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407).
- (ac) Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. Chapter 11 or dependency and indemnity compensation under 38 U.S.C. Chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.).

PART II: ASSETS

6-II.A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.

Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapter 3.

Income from assets is always anticipated, irrespective of the income examination type.

PHA Policy

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The PHA will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) the 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.

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

6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]

PHAs must include the value of any business or family assets disposed of by an applicant or participant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application or reexamination, as applicable, in excess of the consideration received for the asset. An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

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].

PHA Policy

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

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.

PHA 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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

Family Declaration

PHA Policy

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

6-II.C. ASSET INCLUSIONS AND EXCLUSIONS

Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

Personal property includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds \$50,000 (adjusted annually by HUD). When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
<p>Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</p> <p>Furniture, carpets, linens, kitchenware</p> <p>Common appliances</p> <p>Common electronics (e.g., radio, television, DVD player, gaming system)</p> <p>Clothing</p> <p>Personal effects that are not luxury items (e.g., toys, books)</p> <p>Wedding and engagement rings</p> <p>Jewelry used in religious/cultural celebrations and ceremonies</p> <p>Religious and cultural items</p> <p>Medical equipment and supplies</p> <p>Health care–related supplies</p> <p>Musical instruments used by the family</p> <p>Personal computers, phones, tablets, and related equipment</p> <p>Professional tools of trade of the family, for example professional books</p> <p>Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</p> <p>Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</p>	<p>Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))</p> <p>Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</p> <p>Recreational boat/watercraft</p> <p>Expensive jewelry without religious or cultural value, or which does not hold family significance</p> <p>Collectibles (e.g., coins/stamps)</p> <p>Equipment/machinery that is not used to generate income for a business</p> <p>Items such as gems/precious metals, antique cars, artwork, etc.</p>

PHA Policy

In determining the value of non-necessary personal property, the PHA will use the family’s estimate of the value. The PHA may obtain an appraisal if there is reason to believe that the family’s estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Checking and Savings Accounts [Notice PIH 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

ABLE Accounts [24 CFR 5.609(b)(10); Notice PIH 2019-09]

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds
[24 CFR 5.603(b)(1)]***

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0.

PHA Policy

The PHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

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

Lump-Sum Additions to Net Family Assets [24 CFR 5.609(b)(24(viii)); Notice PIH 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. The PHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the PHA chooses not to conduct the examination.

For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.

PHA Policy

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIIP FAQs]. For example, if the family receives a \$1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

Jointly Owned Assets [Notice PIH 2023-27]

For assets owned jointly by the family and one or more individuals outside of the assisted family, the PHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]

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

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Typically, special needs trusts are considered irrevocable. Irrevocable trusts not under the control of any member of the family are excluded from net family assets. The value of the trust continues to be excluded from net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Further, where an irrevocable trust is excluded from net family assets, the PHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

- A revocable trust that is under the control of the family is included in net family assets when the grantor is a member of the assisted family. If a revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income. For example, interest earned or rental income if the property is held in the trust. The PHA must calculate imputed income on the revocable trust if net family assets are more than \$50,000, as adjusted by inflation, and actual income from the trust cannot be calculated (e.g., if the trust is comprised of farmland that is not in use).
- A revocable trust that is not under the control of the family is excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee.

For both irrevocable and revocable trusts, if the value of the trust is not considered part of net family assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of net family assets. When the subtraction results in a negative number, then net family assets are considered \$0.

Asset Exclusions [24 CFR 5.603(b)]

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
 - *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
 - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];

- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any “baby bond” account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

Net Family Assets

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

PHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

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

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].

Actual Income from Assets

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The PHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

The PHA may not calculate or include any imputed income from assets when net family assets total \$50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

Imputed Income from Assets

When net family assets exceed \$50,000 (adjusted annually by HUD), the PHA may not rely on self-certification. If actual returns can be calculated, the PHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the PHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). Imputed income is calculated by multiplying the net cash value of the asset, after deducting reasonable costs that would be incurred in disposing of the asset, by the HUD-published passbook rate. If the PHA can compute actual income from some but not all assets, the PHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

PART III: ADJUSTED INCOME

6-III.A. INTRODUCTION

Overview

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

5.611 *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions*

- (1) \$480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (2) \$525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (3) The sum of the following, to the extent the sum exceeds ten percent of annual income:
 - (i) Unreimbursed health and medical care expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed; 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

PHA Policy

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., childcare during school and non-school periods and cyclical medical expenses), the PHA 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 PHA 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 PHA may require the family to provide documentation of payments made in the preceding year.

When calculating health and medical care expenses, the PHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, the PHA will use information for the previous 12-month period.

6-III.B. DEPENDENT DEDUCTION

An allowance of \$480 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(2)].

An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

6-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b)]

Unreimbursed health and medical care expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed ten percent of annual income.

This deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a health and medical care expense deduction, the unreimbursed health and medical care expenses of all family members are included. The PHA calculates health and medical care expenses based on the family's past expenses, but accounting for any anticipated changes in expenses during the certification period.

Definition of *Medical Expenses*

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean “any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.”

Health and medical care expenses may be deducted from annual income only if they are eligible under this definition and not otherwise reimbursed.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PHAs to specifically align their policies to IRS Publication 502. PHAs must review each expense to determine whether it is eligible in accordance with HUD's definition.

While PHA policies may not specifically align with IRS Publication 502, HUD recommends PHAs use it as a standard for determining allowable expenses, and the PHA may list examples of allowable expenses in their policy provided they comply with HUD's definition at 24 CFR 5.603. The PHA may not define *health and medical care expenses* more narrowly than the regulation.

PHA Policy

The PHA will use the most current IRS Publication 502 as a standard for determining if expenses claimed by eligible families qualify as health and medical care expenses. However, under no circumstances will the PHA deduct any expenses listed in IRS Publication 502 that do not conform with HUD's definition of *health and medical care expenses*.

Summary of Typical Allowable Health and Medical Care Expenses	
<p>Services of medical professionals</p> <p>Surgery and medical procedures that are necessary, legal, and non-cosmetic</p> <p>Services of medical facilities</p> <p>Hospitalization, long-term care, and in-home nursing services</p> <p>Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor</p> <p>Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)</p> <p>Medical insurance premiums or the cost of a health maintenance organization (HMO)</p> <p>Medicare Part B and Part D premiums</p>	<p>Substance abuse treatment programs</p> <p>Psychiatric treatment</p> <p>Ambulance services and some costs of transportation related to medical expenses. The PHA will use the most current medical mileage rate listed in IRS Publication 502.</p> <p>The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)</p> <p>The costs of buying, training, and maintaining a guide dog or other service animal to assist a visually impaired or hearing disabled person, or a person with other physical disabilities. In general, this includes any costs, such as food, grooming, and veterinary care, incurred in maintaining the health and vitality of the service animal so that it may perform its duties.</p>
<p>Note: This chart provides a summary of eligible health and medical care expenses only. In all cases, the PHA will consider whether health and medical expenses care expenses claimed by the family are eligible under HUD's definition.</p>	

Families That Qualify for Both Health and Medical and Disability Assistance Expenses

PHA Policy

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

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

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

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

Earned Income Limit on the Disability Assistance Expense Deduction

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

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

PHA 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 PHA 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 PHA 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 Auxiliary Apparatus [Notice PIH 2023-27]

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type or special equipment to assist a person who is deaf or hard of hearing.

Eligible Attendant Care [Notice PIH 2023-27]

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities.

PHA Policy

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

Payments to Family Members

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

Necessary and Reasonable Expenses

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

PHA Policy

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

Families That Qualify for Both Health and Medical and Disability Assistance Expenses

PHA 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 health and medical care or disability assistance expenses, the PHA will consider them health and medical care expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-III.F. CHILDCARE EXPENSE DEDUCTION

HUD defines *childcare expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age (age 12 and younger) (including foster children) during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Clarifying the Meaning of *Child* for This Deduction

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

PHA 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 PHA 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

PHA 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 PHA.

Furthering Education

PHA Policy

If the childcare expense being claimed is to enable a family member to further their 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

PHA 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 Childcare Expense Deduction

When a family member looks for work or furthers their 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.

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].

PHA 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 PHA 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 Childcare Activities

PHA 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 PHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the childcare provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

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

PHA Policy

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

To establish the reasonableness of childcare costs, the PHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

6-III.G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]

Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

Phased-In Relief

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first, after the date on which the PHA implements phased-in relief.

For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
 - When an eligible family's phased-in relief begins at an interim reexamination, the PHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

When an eligible family's phased-in relief begins at an interim reexamination, the PHA must process another transaction (either an interim reexamination or non-interim transaction, as applicable) one year later to move the family to the next phase.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another public housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the PHA has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the PHA. When a family moves with continued assistance or ports to a new PHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The PHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

PHA Policy

The PHA will not continue the phased-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

General Relief

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in PHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above. HUD requires that PHAs develop policies defining what constitutes a hardship for purposes of this exemption.

The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

PHA Policy

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances. The PHA defines *a change in circumstances* as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexamination in accordance with PHA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

Other circumstances as determined by the PHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

PHA Policy

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a maximum number of 90-day extensions.

PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

PHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The PHA will require updated verification based on the family's current circumstances. Additional extension(s) may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

Childcare Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the PHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the PHA must recalculate the family's adjusted income and continue the childcare deduction.

The PHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

PHA Policy

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The PHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The PHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the PHA denies the request, the notice must specifically state the reason for the denial. PHAs must provide families 30 days' notice of any increase in rent.

If the PHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the PHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

PHA Policy

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request an informal grievance hearing.

If the family qualifies for an exemption, the PHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The PHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in PHA policies. PHAs are not limited to a maximum number of 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

PHAs must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the PHA denies the request, the notice must specifically state the reason for the denial.

PHAs must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

PHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption. The PHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(ii)]

The PHA may adopt additional permissive deductions from annual income if they establish a policy in the administrative plan. Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the PHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128]. Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility.

A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding for subsidy costs resulting from such deductions.

PHA Policy

The PHA has opted not to use permissive deductions.

PART IV: CALCULATING FAMILY SHARE AND PHA SUBSIDY

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

TTP Formula [24 CFR 5.628]

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

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

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-IV.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

Welfare Rent [24 CFR 5.628]

PHA Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

PHA Policy

The minimum rent for this locality is \$50.

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

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the 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-IV.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-IV.C.)

Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]

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

PHA Policy

The PHA will either make utility reimbursements to the family or directly to Central Maine Power (CMP).

The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship.

PHA Policy

The PHA will issue all utility reimbursements monthly.

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

PHA Policy

The financial hardship rules described below apply in this jurisdiction because the PHA has established a minimum rent of \$50.

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.

PHA 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.

PHA 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.

PHA 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.

PHA Policy

The PHA has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family’s request.

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

PHA Policy

The PHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption	
Assume the PHA has established a minimum rent of \$50.	
Family Share – No Hardship	Family Share – With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

PHA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family’s ability to pay the minimum rent.

The PHA 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.

PHA Policy

The PHA will require the family to repay the suspended amount within 30 calendar days of the PHA'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.

PHA Policy

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

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.

PHA 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.

6-IV.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]

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 a zip code area or FMR area and a family's unit is located in the exception area, the PHA must use the appropriate payment standard for the exception area.

The 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 a PHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, the PHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if the PHA does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, the PHA may either reduce the payment standard to the current amount in effect on the PHA's payment standard schedule, or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. The PHA may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

In any case, the PHA must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. The PHA's policy on decreases in the payment standard during the term of the HAP contract apply to all families under HAP contract at the time of the effective date of the decrease in the payment standard within the designated area.

PHA Policy

If a PHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the PHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The PHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for 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 (Voucher 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 of not more than 120 percent of the published FMR.

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

Overview

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the PHA's subsidy standards.

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

Reasonable Accommodation and Individual Relief

On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the PHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as "Medical Baseline discounts") offered by the local utility company.

PHA Policy

The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required.

The PHA will consider the following criteria as valid reasons for granting individual relief:

The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.

The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, the PHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or PHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. The PHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

At its discretion, the PHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or PHA-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

Utility Allowance Revisions

At reexamination, the PHA must use the current utility allowance schedule [HCV GB, p. 18-8].

PHA Policy

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

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

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

EXHIBIT 6-1: ANNUAL INCOME FULL DEFINITION

24 CFR 5.609

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

(b) Annual income does not include the following:

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

- 1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (
- 3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government.

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

(12)

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

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

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

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

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) Deferred periodic amounts from Supplemental Security Income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

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

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such

accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement

arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) 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 trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

EXHIBIT 6-3: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

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

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

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

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

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

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

Specified welfare benefit reduction.

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

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

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

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

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

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family’s annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the

basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

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

INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the PHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27]

Consent Forms

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886-A, this form does not release all the information necessary to the administration of the program. The PHA must also develop its own release forms to cover all other necessary information.

Form HUD-9886-A [24 CFR 5.230(b)(1), b(2), (c)(4), and (c)(5); and Notice PIH 2023-27]

All adult applicants and participants sign form HUD-9886-A, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886-A at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886-A at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886-A be signed only once. On or after January 1, 2024 (regardless of the PHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886-A at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886-A will not be submitted to the PHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the PHA in administrative instructions.

The PHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. PHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

PHA Policy

Family members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Form HUD-9886-A within 10 business days of turning 18 years of age at the family's next annual or interim reexamination, whichever is earlier.

The purpose of form HUD-9886-A 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).

The PHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the PHA to revoke consent.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the PHA must 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.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

PHA Policy

The PHA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with PHA policy.

In order for a family to revoke their consent, the family must provide written notice to the PHA.

Within 10 business days of the date the family provides written notice, the PHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the PHA will notify their local HUD office.

7-I.B. USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(c)(3) and Notice PIH 2023-27]

PHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. PHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the PHA adopts a policy to accept this type of verification, the PHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. PHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs.

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Tax Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register*.

If the PHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, PHAs will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the PHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that PHAs are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by the PHA. PHAs are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If the PHA is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the PHA must calculate the family's annual income using traditional methods as outlined in Notice PIH 2023-27 and this chapter.

If the PHA uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet the PHA's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. PHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

PHA Policy

When available and applicable, the PHA will accept other programs' Safe Harbor determinations of income at annual reexamination to determine the family's total annual income. The PHA will still require third-party verification of all deductions such as the health and medical care expense or childcare expense deductions. Further, if the family is eligible for and claims the disability assistance expense or childcare expense deductions, where applicable, the PHA will obtain third-party verification of the amount of employment income of the individual(s) enabled to work in order to cap the respective expenses as required.

Prior to using any Safe Harbor determination from another program, the PHA will ask the family if they agree with the income amounts listed. If the family disputes the income amounts on the Safe Harbor determination, the PHA will obtain third-party verification of all sources of income and assets (as applicable).

The PHA will not accept other programs' determinations of income for any new admission or interim reexamination.

With the exception of income determinations made under the Low-Income Housing Tax Credit (LIHTC) program, the PHA will accept Safe Harbor determinations from any of the programs listed above.

In order to be acceptable, the income determination must:

- Be dated within 12 months of the dates listed above;

- State the family size

- Be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members); and

- Must state the amount of the family's annual income.

The determination need not list each source of income individually. If the PHA does not receive any acceptable income determination documentation or is unable to obtain documentation, then the PHA will revert to third-party verification of income for the family.

When families present multiple verifications from the same or different acceptable Safe Harbor programs, the PHA will use the most recent income determination, unless the family presents acceptable evidence that the PHA should consider an alternative verification from a different Safe Harbor source.

When the PHA uses a Safe Harbor income determination from another program, and the family's income subsequently changes, the family is required to report the change to the PHA. Depending on when the change occurred, the change may or may not impact the PHA's calculation of the family's total annual income. Changes that occur between the time the PHA receives the Safe Harbor documentation and the effective date of the family's annual reexamination will not be considered. If the family has a change in income that occurs after the annual reexamination effective date, the PHA will conduct an interim reexamination if the change meets the requirements for performing an interim reexamination as outlined in Chapter 11. In this case, the PHA will use third-party verification to verify the change.

**7-I.C. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c);
Notice PIH 2023-27]**

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years, the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or other inflationary adjustment factor. Streamlining policies are optional. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

When 90 percent or more of a family's unadjusted income is from fixed sources, the PHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but PHAs may choose to adjust sources of non-fixed income based on third-party verification. PHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs may apply a COLA to each of the family's sources of fixed income. PHAs must determine all other income using standard verification requirements as outlined in Notice PIH 2023-27.

PHA Policy

When the PHA does not use a Safe Harbor income determination from a federal assistance program to determine the family's annual income as outlined above, then PHA will use a streamlined income determinations where applicable.

Regardless of the percent of a family's unadjusted income from fixed income sources:

The PHA will streamline the annual reexamination process by applying the verified COLA/inflationary adjustment factor to fixed-income sources.

The family will be required to sign a self-certification stating that their sources of fixed income have not changed from the previous year.

The PHA will document in the file how the determination that a source of income was fixed was made.

If the family's sources of fixed income have changed from the previous year, the PHA will obtain third-party verification of any new sources of fixed income.

All other income will be verified using third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy.

In the following circumstances, regardless of the percentage of income received from fixed sources, the PHA will obtain third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy:

Of all assets when net family assets exceed \$50,000;

Of all deductions and allowances from annual income;

If a family member with a fixed source of income is added;

If verification of the COLA or rate of interest is not available;

During the intake process and at least once every three years thereafter.

7-I.D. VERIFICATION HIERARCHY [Notice PIH 2023-27]

When the PHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires the PHA to obtain third-party verification of:

- Reported family annual income;
- The value of net family assets when the net value exceeds \$50,000 (as adjusted annually);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

In order of priority, the forms of verification that the PHA will use are:

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The PHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD’s Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
 - Written third-party verification from the source, also known as “family-provided verification”
 - Or EIV plus self-certification
- Medium: Level 3: Written third-party verification form
- Medium: Level 2: Oral third-party verification
- Low: Level 1: Self-certification (not third-party verification)

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

File Documentation

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family’s file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

7-I.E. LEVEL 5 AND 6 VERIFICATIONS: UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified 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.

HUD's Enterprise Income Verification (EIV) System (Mandatory)

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.

The following policies apply to the use of HUD's EIV system.

EIV Income Report

PHAs are required to obtain an EIV Income Report for each family any time the PHA conducts an annual reexamination. However, PHAs are not required to use the EIV Income Report:

- At annual reexamination if the PHA used Safe Harbor verification from another means-test federal assistance program to determine the family's income; or
- During any interim reexaminations.

The EIV Income Report is also not available for program applicants at admission.

When required to use the EIV Income Report, in order for the report to be considered current, the PHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.

PHA Policy

Except for when Safe Harbor verification from another means-tested federal assistance program is used to determine the family's annual income, the PHA will obtain an EIV Income Report for all annual reexaminations for all families on a monthly basis. The PHA will ensure that all EIV Income Reports are pulled within 120 days of the effective date of the annual reexamination.

Income reports will only be used for interim reexaminations as necessary. For example, EIV may be used to verify that families claiming zero income are not receiving income from any sources listed in EIV.

Income reports will be retained in participant files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of the family's participation.

When the PHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

New Hires Report [Notice PIH 2023-27]

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

PHAs must review this information at annual reexamination except when the PHA uses Safe Harbor verification from another means-tested federal assistance program to determine the family's income.

PHAs that do not require families to undergo interim reexaminations for earned income increases after an interim decrease are not required to review this report between a family's annual reexamination. If the PHA requires an interim for increases in earned income after an interim decrease, then the PHA must review the report quarterly after the family's interim decrease.

PHA Policy

In accordance with PHA policies in Chapter 11, the PHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which the PHA uses Safe Harbor income determinations to determine a family's annual income, the PHA will only review the New Hires Report at annual reexamination.

No Income Reported by HHS or SSA Report

This report is a tool for PHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that the participant does not have any income. PHAs obtain written, third-party verification of any income reported by the participant. The PHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

PHA Policy

The PHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The PHA will re-verify the status of participants identified on the report quarterly. Based on the information provided by the family and in EIV, the PHA may require that family members provide verifications or sign release forms in order to obtain additional verification.

When the PHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity

EIV Identity Verification Report

The EIV system verifies tenant identities against SSA records. These records are compared to HUD data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2023-27].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

PHA Policy

The PHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The PHA will attempt to resolve discrepancies by obtaining appropriate documentation from the participant. When the PHA determines that discrepancies exist as a result of PHA errors such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The PHA is required to review the report at least quarterly.

PHA Policy

The PHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PHA must notify the owner in writing of the deceased head of household.

PHAs may list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

PHA Policy

The PHA will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy. The PHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

Other EIV Reports [Notice PIH 2023-27]

The PHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

Upfront Income Verification Using Non-HUD Systems

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

PHA Policy

The PHA will inform all applicants and participants of its use of the following UIV resources:

The Work Number

Bank VOD

IRS Form 4506T

7-I.F. LEVEL 4 VERIFICATION [Notice PIH 2023-27]

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

EIV + Self-Certification

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as *EIV + self-certification*. When calculating income using this method, the PHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

PHA Policy

At annual reexamination, if the PHA is unable to use a determination of income from a means-tested federal assistance program and if there are no reported changes to an income source, the PHA will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

The PHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The PHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the PHA will use written third-party verification from the source as outlined below.

The PHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

Written Third-Party Verification from the Source

Written, third-party verification from the source is also known as “tenant-provided verification.” In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the PHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. The PHA may use the verification obtained during an interim reexamination for an annual reexamination if there have been no other changes to annual income since the interim reexamination. Documents may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer’s transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

The PHA is required to obtain, at minimum, two current and consecutive pay stubs when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, the PHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When the family disputes EIV-reported employment income, the PHA uses written third-party verification.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

PHA Policy

In general, the PHA will use third-party verification from the source in the following circumstances:

- At annual reexamination when EIV + self-certification is not used;
- For all new admissions; and
- For all interim reexaminations.

The PHA will not use this method if the PHA is able to use an income determination from a means-tested federal assistance program or if the PHA uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the PHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible. If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, the PHA will obtain one statement that reflects the current balance of the account.

When pay stubs are used, the PHA will require the family to provide the two most current, consecutive pay stubs. At the PHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PHA may request additional paystubs or a payroll record.

7-I.G. LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023 -27]

This type of verification is a form developed by the PHA and used uniformly for all families when needed to collect information from a third-party source. This is known as “traditional third-party verification.” PHAs send a PHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

The PHA may use this method when higher forms are unavailable or are rejected by the PHA or when the family is unable to provide acceptable verification. The PHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

PHA Policy

Typically, the PHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, the PHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

7.I.H. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

The PHA may skip this level of verification if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

PHA Policy

In general, the PHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, the PHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if the PHA chooses to obtain oral third-party verification, the PHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed.

When Third-Party Verification is Not Required [Notice PIH 2023-27]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

PHA Policy

If the family cannot provide original documents, the PHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

7-I.I. LEVEL 1: NON-THIRD-PARTY VERIFICATION TECHNIQUE: SELF-CERTIFICATION [Notice PIH 2023-27]

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other required verification techniques.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$50,000 or less and the PHA has adopted a policy to accept self certification
- The family declares that they do not have any present ownership in any real property
- A family reports zero income;
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- The PHA has adopted a policy to implement streamlined verification for fixed sources of income (See Chapter 11)

When the PHA was required to obtain third-party verification but instead relies self-certification, the family's file must be documented to explain why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

PHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA 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 PHA and must be signed by the family member whose information or status is being verified.

All self-certifications will include the following language:

“I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. **WARNING:** Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802).”

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

PHA Policy

The PHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver’s license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) Current U.S. passport Current government employer identification card with picture	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA’s discretion, a third party who knows the person may attest to the person’s identity. The certification must be provided in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PHA has reason to doubt the identity of a person representing themselves to be a participant.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH 2023-27]

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change their declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The PHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the PHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

PHA Policy

The PHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

The PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

PHA Policy

The PHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The PHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the PHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously assisted occupancy.

PHA Policy

The PHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," the PHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

PHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the PHA will not remove and destroy copies of documentation accepted as evidence of social security numbers.

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

PHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

PHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

PHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

PHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a separation or divorce, the PHA will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

PHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill), if the PHA so requests.

Foster Children and Foster Adults

PHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

PHA Policy

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family reports full-time student status for an adult other than the head, spouse, or cohead.

The family reports childcare expenses to enable a family member to further their education.

The family includes a student enrolled in an *institution of higher education*.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

PHA Policy

In accordance with the verification hierarchy described in section 7-1.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.

The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the PHA cannot verify at least one of these exemption criteria, the PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the PHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from their parents (see below).

Independent Student

PHA Policy

The PHA will verify a student's independence from their parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing and verifying previous address information to determine whether the student has established a household separate from their parents for at least one year, or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)

Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0, except in cases in which the PHA determines that the student is a *vulnerable youth* (see section 3-II.E)

7-II.F. DOCUMENTATION OF DISABILITY

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability

Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

PHA Policy

For family members claiming disability who receive disability benefits from the SSA, the PHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant or participant receives the benefit verification letter they will be required to provide it to the PHA.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

PHA 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.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and 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.

PHA Policy

Family members who claim U.S. citizenship or national status will be required to provide additional documentation if they indicate they were not born in the United States.

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

PHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

PHA Policy

The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The PHA will verify this preference using the PHA's termination records.

The PHA also offers a preference for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking, as described in Section 4-III.C. To verify that applicants qualify for the preference, the PHA will follow documentation requirements outlined in Section 16-IX.D.

The residency preference applies to a family if the head of household, spouse, or co-head is residing in, or is employed in, the PHA's jurisdiction at the time the family is pulled from the waitlist. The PHA will verify this preference using a copy of a lease, utility bill or paystub; the PHA may accept other forms of verification on a case-by-case basis.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6 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 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.

PHA Policy

The following policies do not apply when the PHA uses a Safe Harbor income determination from a means-tested federal assistance program.

7-III.A. EARNED INCOME

Tips

PHA Policy

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

Wages

PHA Policy

When the PHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

The PHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

PHA Policy

Business owners and self-employed persons will be required to provide:

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

For self-employed individuals who claim they do not to file tax returns, The PHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the PHA will provide a format for the individual to declare their income and expenses. The PHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

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, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

Social Security/SSI Benefits [Notice PIH 2023-27]

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the PHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should help the applicant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the PHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the PHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The PHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the PHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should help the participant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

7-III.D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

PHA Policy

Verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 12 months prior to PHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received

Note: Families are not required to undertake independent enforcement action.

7-III.E. NONRECURRING INCOME [Notice PIH 2023-27]

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. PHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year.

PHA Policy

The PHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, the PHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

7-III.F. ASSETS AND INCOME FROM ASSETS

Net Family Assets [24 CFR 5.603]

At admission and reexam, for families with net assets totaling \$50,000 or less (adjusted annually), the PHA may, but is not required to, accept the family's self-certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. PHAs must clarify during the self-certification process which assets are included/excluded from net family assets.

For PHAs that choose to accept self-certification, the PHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

PHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000, the PHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

PHA Policy

For families with net assets totaling \$50,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

When verification is required, in determining the value of checking or savings accounts, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the PHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2); Notice PIH 2023-27]

The PHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3. The PHA may accept a self-certification from the family stating that the family does not have any present ownership in any real property. If the family certifies that they do not have any present ownership interest in real property, the PHA may take that as sufficient to determine the family is not out of compliance with the real property restriction. If the family declares they have present ownership in real property, the PHA must obtain third-party verification of the family's legal right to reside in the property, the effective legal authority to sell the property, and whether the property is suitable for occupancy by the family as a residence.

PHA Policy

The PHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the PHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

7-III.G. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

PHA Policy

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The PHA will verify the value of assets disposed of only if:

The PHA 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 they have given this \$10,000 to their son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued their 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.

7-III.H. NET INCOME FROM RENTAL PROPERTY

PHA 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 PHA 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.

7-III.I. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS

[Notice PIH 2023-27]

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the PHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

7-III.J. RETIREMENT ACCOUNTS

PHA Policy

The PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken, and any regular payments.

7-III.K. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the PHA is **not** required to follow the verification hierarchy. For fully excluded income, the PHA is **not** required to document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For partially excluded income, the PHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student).

PHA Policy

The PHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source.

The PHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.L. ZERO INCOME FAMILIES [Notice PIH 2023-27]

PHAs have discretion to establish reasonable procedures to manage the risk of unreported income, such as asking families to complete a zero-income worksheet at admission or periodically after admission to determine if they have any sources of unreported income or searching any UIV sources for unreported income.

In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)].

PHAs may accept a self-certification of zero income from the family without taking any additional steps to verify zero reported income. HUD does not require such self-certifications be notarized.

PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

PHA Policy

The PHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc., are not being received by families claiming to have zero annual income.

The PHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the PHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The PHA will only conduct interims in accordance with PHA policy in Chapter 11.

7-III.M. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are included [24 CFR 5.609(b)(9)(ii)].

PHA Policy

The PHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the PHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.N. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from their parents or a *vulnerable youth* in accordance with PHA policy [24 CFR 5.612, FR Notice 4/10/06, p. 18146, and FR Notice 9/21/16].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

PHA Policy

If the PHA is required to determine the income eligibility of a student's parents, the PHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The PHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the PHA. The required information must be submitted (postmarked) within 10 business days of the date of the PHA's request or within any extended timeframe approved by the PHA.

The PHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the 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 for a full discussion of this deduction. The PHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person 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 for a discussion of the deduction. The PHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. HEALTH AND MEDICAL CARE EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The PHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

PHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

When income is projected at new admission or interim, the PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms if the family is unable to provide acceptable documentation.

When income is projected at new admission or interim, if third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for the PHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

PHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

Expenses Incurred in Past Years

PHA Policy

At new admission and interim reexam, when anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The PHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

Amount of Expense

Attendant Care

PHA Policy

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

When income is projected at new admission or interim, if third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

Auxiliary Apparatus

PHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the 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 Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

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.

PHA Policy

The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

PHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILDCARE EXPENSES

Policies related to childcare expenses are found in Chapter 6. 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 (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of childcare.
- The costs are reasonable.

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.

PHA Policy

The family (and the care provider) will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

Pursuing an Eligible Activity

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

PHA Policy

Information to be Gathered

The PHA 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 PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PHA will request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to the PHA any reports provided to the other agency.

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The PHA will request third-party documentation to verify that the person permitted to further their education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The PHA will seek third-party verification 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. The documentation may be provided by the family.

Allowable Type of Childcare

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

PHA Policy

The PHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6.

The PHA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA 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.

PHA Policy

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

<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 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements.

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. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and 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

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the PHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 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.

PHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

The PHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The 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.

PHA 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

PHA Policy

As permitted by HUD, the PHA 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 must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All sinks must have functioning stoppers.

Toilets

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a); FR Notice 1/18/17]

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.

PHA Policy

The following are considered life-threatening conditions:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled

Any electrical problem or condition that could result in shock or fire

A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed

A light fixture is hanging by its wires

A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit

A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed

An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses

A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections

Any nicks, abrasions, or fraying of the insulation that exposes conducting wire

Exposed bare wires or electrical connections

Any condition that results in openings in electrical panels or electrical control device enclosures

Water leaking or ponding near any electrical device

Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Any components that affect the function of the fire escape are missing or damaged

Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency

The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency

Absence of a functioning toilet in the unit

Inoperable or missing smoke detectors

Missing or inoperable carbon monoxide detector

Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)

Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting

The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases

A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside

A fuel-fired space heater is not properly vented or lacks available combustion air

A non-vented space heater is present

Safety devices on a fuel-fired space heater are missing or damaged

The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas

Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. 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.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation 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; 40 CFR 745.227]. 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 elevated blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 24 CFR 982.403]

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually or biennially, 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 inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

Inspection Costs [Notice PIH 2016-05]

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

PHA Policy

The PHA will not charge a fee for failed reinspections.

Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform HQS inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates HQS, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

PHA Policy

The PHA will not conduct any HQS inspection using RVI.

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

PHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

PHA Policy

When a family occupies the unit at the time of inspection an authorized adult 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 PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted but is not required.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Initial Inspections [FR Notice 1/18/17]

The PHA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS inspection, but only if the deficiencies identified are non-life-threatening. Further, the PHA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

PHA Policy

The unit must pass the HQS inspection on or before the effective date of the HAP contract.

The PHA will not rely on alternative inspections and will conduct an HQS inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

PHA Policy

The PHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

PHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the PHA for good cause. The PHA will reinspect the unit within five business days of the date the owner notifies the PHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the PHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The PHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

PHA Policy

If utility service is not available for testing at the time of the initial inspection, the PHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The PHA will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the PHA.

Appliances [Form HUD-52580]

PHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the PHA. The PHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

**8-II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406;
Notice PIH 2016-05]**

PHA Policy

Each unit under HAP contract must be inspected biennially within 24 months of the last full HQS inspection. The PHA reserves the right to require annual inspections of any unit or owner at any time.

The PHA will not rely on alternative inspection standards.

Scheduling the Inspection

PHA Policy

If an adult cannot be present on the scheduled date, the family should request that the PHA reschedule the inspection. The PHA and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The PHA may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the PHA will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]

If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

PHA Policy

During a special inspection, the PHA 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 90 days of the date the special inspection is scheduled the PHA may elect to conduct a full annual/biennial inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); 24 CFR 985.3(e); 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 three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

PHA Policy

When life-threatening conditions are identified, the PHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the PHA's notice.

When failures that are not life-threatening are identified, the PHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the 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 PHA-approved extension), the owner's HAP will be abated in accordance with PHA 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 PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

Extensions

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 [24 CFR 982.404].

PHA Policy

Extensions will be granted in cases where the PHA 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 where an extension may be granted up to 60 days. Further extensions, in 30-day increments, may be granted on a case by case basis when the landlord identifies that action has been initiated to complete the deficiency, but completion of the repair is delayed by exceptional circumstances beyond the control of the landlord. Exceptional circumstances may include but are not limited to: weather, labor or material delays, and pandemic restrictions. Extensions beyond 180 days will generally not be allowed except in extreme situations. In all cases the landlord must provide documentation that is acceptable to the PHA validating the reason for an extension along with an action plan that includes a timeline for repair completion. The PHA reserves the right to repeal its decision of an extension if the landlord is deemed to be non-responsive to the action plan or if the deficiency deteriorates and results in an increased risk to the health and safety of the tenants. Note: HQS will be replaced by NSPIRE effective October 1, 2024, and new rules will be implemented at that time.

Reinspections

PHA Policy

The PHA will conduct a reinspection immediately following the end of the corrective period, or any PHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the PHA 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 PHA policies. If the PHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

The PHA will not accept self-certification of HQS repairs.

8-II.G. 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 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

PHA Policy

The PHA will make all HAP abatements effective the first of the month following the expiration of the PHA specified correction period (including any extension).

The PHA will inspect abated units within five 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.

PHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the PHA before the termination date of the HAP contract, the PHA 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 PHA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the 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]

8-III.A. OVERVIEW

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The 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.

PHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the PHA 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 PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

PHA and HUD-Initiated Rent Reasonableness Determinations

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

PHA Policy

In addition to the instances described above, the PHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the PHA determines that the initial rent reasonableness determination was in error or (2) the PHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, 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.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

PHA Policy

Westbrook Housing contracts with a third-party consultant to devise methodology for fairly determining reasonable rent. The consultant is Market Vision Partners, LLC (MVP) and their product is called “Rentellect, the Intelligent Rent Reasonableness Test.”

The system is limited access and allows the PHA to enter descriptive information about a rental unit, including amenities and landlord provided utilities. The system provides a pass/fail determination based upon statistical analysis of the local rental market. The system also provides sample data from the specific neighborhood where the subject is located as supplemental information and confirmation of the test.

The analysis for rent reasonableness under Rentellect is based on data collected by MVP from a wide variety of sources including but not limited to the Internet, newspapers, rental listings and real estate brokers. Data collection is year-round in order to provide indications of local market conditions. The data collected includes the nine criteria listed above. Sources and provision of data is done monthly and aging data is removed. The PHA will enter data on individual units listed on the Request for Tenancy Approval and collected at the time of the initial HQS Inspection. All rent reasonableness tests must indicate a passing score before any unit can be placed under the HAP Contract. System produced documentation of this test will be placed in the tenant file for the record.

How Rents Are Determined

PHA 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. Westbrook Housing will complete a rent reasonableness test using Rentellect. The passed rent reasonableness test will be printed and retained in the file, showing the information used for comparison and comparable units.

The PHA will notify the owner of the rent the PHA 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 PHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the PHA’s request for information or the owner’s request to submit information.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities within 30 days 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
- Maintain covered housing without deteriorated paint if there is child under six in the family

For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by the PHA). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *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.

- *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.
- *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.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- *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 8

NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 5 Subpart G and Notice PIH 2023-28]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) and Project Based Voucher (PBV) assistance meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2024. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan [Notice PIH 2023-28].

All units must pass an NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets NSPIRE standards. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

Provided they meet certain requirements, HUD permits PHAs to establish some additional local requirements in their administrative plans. The use of the term *NSPIRE* in this plan refers to the combination of both HUD and PHA-established requirements. However, state and local codes, compliance is not part of the determination of whether a unit passes the NSPIRE standards.

This chapter explains HUD and PHA requirements related to physical inspections and rent reasonableness as follows:

Part I. Physical Standards. This part discusses NSPIRE standards required of units occupied by HCV and PBV-assisted families. It also identifies affirmative habitability requirements for all units and life-threatening conditions that must be corrected in 24 hours.

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 NSPIRE standards.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA will use to make rent reasonableness determinations.

Special NSPIRE requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction. Special requirements for the PBV and RAD PBV programs (if applicable) are discussed in Chapters 17 and 18, respectively.

PART I: NSPIRE STANDARDS

NSPIRE standards are published on HUD's NSPIRE website as well as in the NSPIRE Final Rule [FR Notice 5/1//2023].

8-I.A. INSPECTABLE AREAS [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)]

NSPIRE defines the inspectable areas for inspection under the standards as inside, outside and unit. However, the inspection requirement for the HCV and PBV programs only applies to units occupied or to be occupied by HCV or PBV participants and common areas and exterior areas which either service or are associated with such units.

8-I.B. AFFIRMATIVE HABITABILITY REQUIREMENTS [24 CFR 5.703(b), (c), and (d)]

NSPIRE provides for minimum, or affirmative, habitability requirements for each area (unit, inside, outside). These areas must meet these requirements for habitability, which are listed in Exhibit 8-1.

The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness [24 CFR 5.703(e)].

The NSPIRE Smoke Alarm Standard does not require that smoke alarms have a sealed battery; however, upon the effective date of the Public and Federally Assisted Housing Fire Safety Act of 2022 on December 29, 2024, sealed batteries *will* be required.

8-I.C. MODIFICATIONS TO PROVIDE ACCESSIBILITY [24 CFR 100.203; Notice 2003-31; and Notice PIH 2014-02]

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest-bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable NSPIRE 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.

PHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

8-I.D. ADDITIONAL LOCAL REQUIREMENTS [24 CFR 5.705(a)(3) and Notice PIH 2023-28]

The PHA may impose variations to the NSPIRE standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to NSPIRE standards and approved variations must be added to the administrative plan.

HUD may approve inspection criteria variations if the variations apply standards in local housing codes or other codes adopted by the PHA or because of local climatic or geographic conditions. Acceptability criteria variations may only be approved by HUD if such variations either meet or exceed the performance requirements or significantly expand affordable housing opportunities for families assisted under the program.

PHA Policy

The PHA has not requested any HUD-approved variations to NSPIRE standards.

8-I.E. LIFE-THREATENING DEFICIENCIES [Notice PIH 2023-28]

HUD previously required the PHA to define life-threatening conditions in the administrative plan. The NSPIRE standards now describe those conditions which are considered life-threatening and must be corrected within 24 hours.

The following are a list of life-threatening deficiencies under NSPIRE:

Inspectable Item	Deficiency
Call-for-Aid System	System is blocked, or pull cord is higher than 6 inches off the floor.
	System does not function properly
Carbon Monoxide Alarm	Carbon monoxide alarm is missing, not installed, or not installed in a proper location.
	Carbon monoxide alarm is obstructed.
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.
Chimney	A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.
	Chimney exhibits signs of structural failure.
Clothes Dryer Exhaust Ventilation	Electric dryer transition duct is detached or missing.
	Gas dryer transition duct is detached or missing.
	Electric dryer exhaust ventilation system has restricted airflow.
	Dryer transition duct is constructed of unsuitable material.
	Gas dryer exhaust ventilation system has restricted airflow.
Dorr – Entry	Entry door is missing.
Door – Fire Labeled	Fire labeled door is missing.
Egress	Obstructed means of egress.
	Sleeping room is located on the third floor or below and has an obstructed rescue opening.
	Fire escape is obstructed.
Electrical – Conductor, Outlet, and Switch	Outlet or switch is damaged.
	Exposed electrical conductor.
	Water is currently in contact with an electrical conductor.
Electrical – Service Panel	The overcurrent protection device is damaged.
Exit Sign	Exit sign is damaged, missing, obstructed, or not adequately illuminated.

Inspectable Item	Deficiency
Fire Escape	Fire extinguisher is damaged or missing.
Fire Extinguisher	Fire extinguisher pressure gauge reads over or under-charged.
	Fire extinguisher service tag is missing, illegible, or expired.
	Fire extinguisher is damaged or missing.
Flammable and Combustible Items	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR Improperly stored chemicals.
Guardrail	Guardrail is missing or not installed.
	Guardrail is not functionally adequate.
Heating, Ventilation, and Air Conditioning (HVAC)	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.
	Unvented space heater that burns gas, oil, or kerosene is present.
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.
Leak – Gas or Oil	Natural gas, propane, or oil leak.
Mold-like Substance	Presence of mold-like substance at extremely high levels is observed visually.
Smoke Alarm	Smoke alarm is not installed where required.
	Smoke alarm is obstructed.
	Smoke alarm does not produce an audio or visual alarm when tested.
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.
	Sprinkler assembly has evidence of corrosion.
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.
Structural System	Structural system exhibits signs of serious failure.
Toilet	Only 1 toilet was installed, and it is missing.

Inspectable Item	Deficiency
Water Heater	Chimney or flue piping is blocked, misaligned, or missing.
	Gas shutoff valve is damaged, missing, or not installed.

However, PHAs may add additional deficiencies which the PHA considers life-threatening provided they are described in the administrative plan.

PHA Policy

In addition to those listed under the NSPIRE standards, the following are considered life-threatening conditions:

Utilities not in service, including no running hot water

8-I.F. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.

PHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

Owner Responsibilities

The owner must maintain the unit in accordance with NSPIRE regulations and standards. The owner is not responsible for a breach of NSPIRE that is not caused by the owner, and for which the family is responsible (as provided in 24 CFR 982.404(b) and 982.551(c)).

PHA Policy

The owner is responsible for all NSPIRE 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.

The owner will be required to repair an inoperable smoke detector unless the PHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the NSPIRE standards in accordance with HUD requirements. See 8-II-G.

8-I.G. LEAD-BASED PAINT

PHAs and owners must comply with the requirements and timelines in 24 CFR Part 35 Subpart M—Tenant-Based Rental Assistance and Subpart H—Project-Based Assistance. PHAs and owners are reminded that any deteriorated paint in target housing, or other lead-based paint hazard identified through a lead-based paint risk assessment or lead-based paint inspection is considered a violation of NSPIRE standards.

For the HCV program, Subpart M applies to units where a child under age six resides or is expected to reside, common areas that service that unit, and exterior painted surfaces associated with that unit or common areas. For project-based programs, Subpart H applies to assisted units and common areas of the property regardless of whether a child under age six resides or is expected to reside in the unit. NSPIRE does not alter any of the lead-based paint requirements in Part 35 for these programs.

Special Requirements for Children with Elevated Blood Lead Level [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation 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; 40 CFR 745.227]. 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 elevated blood lead level are discussed in Chapter 16.

8-I.H. VIOLATION OF SPACE STANDARDS [24 CFR 5.703(d)(5)]

Units assisted under the HCV or PBV programs must have at least one bedroom or living/sleeping room for each two persons. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. Each habitable room must have two working outlets or one working outlet and a permanent light. HUD defines a *habitable room* as a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas [FR Notice 5/11/23].

A unit that does not meet these space standards is defined as *overcrowded*.

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually or biennially (or triennially for small rural PHAs as defined in 24 CFR 982.305(b)(2)), depending on PHA policy, to confirm that the unit still meets NSPIRE standards.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the NSPIRE standards.

Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all NSPIRE inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A *PHA-owned unit* is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

For information on the inspection of PHA-owned units in the PBV program, see Chapters 17 and 18.

Inspection Costs [Notice PIH 2016-05; 24 CFR 5.705(d)]

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)].

In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

PHA Policy

The PHA will not charge a fee for failed reinspections.

Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform NSPIRE inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates NSPIRE standards, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

PHA Policy

The PHA will not conduct any inspection using RVI.

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

PHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

PHA Policy

When a family occupies the unit at the time of inspection an authorized adult 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 PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted but is not required.

8-II.B. INITIAL INSPECTION

Approving Units [FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406]

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet NSPIRE standards before the PHA approves assisted tenancy. However, while the PHA is required to conduct an inspection prior to approving assisted tenancy, PHAs have two options for bringing units under HAP contract (or, in the case of PBV, approving occupancy and the execution of a lease) more quickly. The PHA may, but is not required to approve assisted tenancy and start HAP if the unit:

- Fails the initial inspection, but only if no life-threatening deficiencies are identified.
- Passed an alternative inspection in the last 24 months.

Otherwise, if neither of the above provisions are adopted, the PHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

PHA Policy

The unit must pass the initial inspection on or before the effective date of the HAP contract.

The PHA will not rely on alternative inspections and will conduct an initial inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections [24 CFR 982.395(b)(2)(i)]

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection.

PHA Policy

The PHA will complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

For new units proposed for the HCV program, life-threatening deficiencies must be resolved before the HAP contract is executed and the family moves into the unit.

PHA Policy

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the PHA for good cause. The PHA will reinspect the unit within five business days of the date the owner notifies the PHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails at the time of the reinspection, the PHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The PHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

Utilities

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

PHA Policy

Utility service must be available for testing at the time of the initial inspection.

Appliances

PHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the PHA. The PHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. ANNUAL/BIENNIAL INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]

HUD requires the PHA to inspect each unit under HAP contract at least biennially (or triennially for small rural PHAs), to confirm that the unit still meets NSPIRE standards. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.

PHA Policy

Each unit under HAP contract must be inspected biennially within 24 months of the last full inspection. The PHA reserves the right to require annual inspections of any unit or owner at any time.

The PHA will not rely on alternative inspection standards.

Scheduling the Inspection

PHA Policy

If an adult cannot be present on the scheduled date, the family should request that the PHA reschedule the inspection. The PHA and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The PHA may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the PHA will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]

If a participant family or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

PHA Policy

During a special inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional 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 90 days of the date the special inspection is scheduled the PHA may elect to conduct a full annual/biennial inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); 24 CFR 985.3(e); 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 NSPIRE standards.

The unit sample must include only units that have been inspected within the preceding three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Correction Timeframes

Each deficiency is identified in the NPSIRE standards as either life-threatening, severe, moderate, or low.

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a PHA-approved extension) after notice has been provided. If low deficiencies are present in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies deficiencies, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

PHA Policy

When life-threatening deficiencies are identified, the PHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the PHA's notice.

When failures that are severe or moderate are identified, the PHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated in accordance with PHA 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 PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

Extensions

For life-threatening deficiencies, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are severe or moderate, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate.

PHA Policy

Extensions will be granted in cases where the PHA 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 where an extension may be granted up to 60 days. Further extensions, in 30-day increments, may be granted on a case by case basis when the landlord identifies that action has been initiated to complete the deficiency, but completion of the repair is delayed by exceptional circumstances beyond the control of the landlord. Exceptional circumstances may include but are not limited to: weather, labor or material delays, and pandemic restrictions. Extensions beyond 180 days will generally not be allowed except in extreme situations. In all cases the landlord must provide documentation that is acceptable to the PHA validating the reason for an extension along with an action plan that includes a timeline for repair completion. The PHA reserves the right to repeal its decision of an extension if the landlord is deemed to be non-responsive to the action plan or if the deficiency deteriorates and results in an increased risk to the health and safety of the tenants.

Reinspections

PHA Policy

The PHA will conduct a reinspection immediately following the end of the corrective period, or any PHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the PHA 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 PHA policies. If the PHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

The PHA will not accept self-certification of repairs. Photos or other documentation of repairs will not be accepted in lieu of a reinspection.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with NSPIRE standards, the PHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct 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 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of deficiencies that are the family's responsibility.

PHA Policy

The PHA will make all HAP abatements effective the first of the month following the expiration of the PHA specified correction period (including any extension).

The PHA will inspect abated units within five 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.

PHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the PHA before the termination date of the HAP contract, the PHA 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 PHA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE [24 CFR 982.404(b)]

Families are responsible for correcting any deficiencies listed in paragraph 8-I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The 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 inspection have been corrected.

PHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the PHA 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 PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

PHA and HUD-Initiated Rent Reasonableness Determinations

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

PHA Policy

In addition to the instances described above, the PHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the PHA determines that the initial rent reasonableness determination was in error or (2) the PHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, 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.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

PHA Policy

Westbrook Housing contracts with a third-party consultant to devise methodology for fairly determining reasonable rent. The consultant is Market Vision Partners, LLC (MVP) and their product is called “Rentellect, the Intelligent Rent Reasonableness Test.”

The system is limited access and allows the PHA to enter descriptive information about a rental unit, including amenities and landlord provided utilities. The system provides a pass/fail determination based upon statistical analysis of the local rental market. The system also provides sample data from the specific neighborhood where the subject is located as supplemental information and confirmation of the test.

The analysis for rent reasonableness under Rentellect is based on data collected by MVP from a wide variety of sources including but not limited to the Internet, newspapers, rental listings and real estate brokers. Data collection is year-round in order to provide indications of local market conditions. The data collected includes the nine criteria listed above. Sources and provision of data is done monthly and aging data is removed. The PHA will enter data on individual units listed on the Request for Tenancy Approval and collected at the time of the initial HQS Inspection. All rent reasonableness tests must indicate a passing score before any unit can be placed under the HAP Contract. System produced documentation of this test will be placed in the tenant file for the record.

How Rents Are Determined

PHA 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. Westbrook Housing will complete a rent reasonableness test using Rentellect. The passed rent reasonableness test will be printed and retained in the file, showing the information used for comparison and comparable units.

The PHA will notify the owner of the rent the PHA 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 PHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the PHA’s request for information or the owner’s request to submit information.

EXHIBIT 8-1: AFFIRMATIVE HABITABILITY REQUIREMENTS

Affirmative Habitability Requirements: Inside
--

Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.
--

Must meet or exceed the carbon monoxide detection standards set by the Secretary through <i>Federal Register</i> notification.
--

Any outlet installed within 6 feet of a water source must be GFCI protected.
--

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
--

Must have permanently mounted light fixtures in any kitchens and each bathroom.

May not contain unvented space heaters that burn gas, oil or kerosene.
--

Affirmative Habitability Requirements: Outside

Any outlet installed within 6 feet of a water source must be GFCI-protected.
--

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
--

Affirmative Habitability Requirements: Unit
Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.
Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.
Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations: <ul style="list-style-type: none"> • On each level of the unit AND • Inside each bedroom or sleeping area AND • With 21 feet of any door to a bedroom measured along a path of travel AND • Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.
If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.
Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.
Must have a permanently mounted light fixture in each bathroom and in the kitchen.
Outlets within 6 feet of water source must be GFCI-protected.
Must have permanently installed heating source.
No units may contain unvented space heaters that burn gas, oil or kerosene.
Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
Must have at least one bedroom or living/sleeping room for each two persons.

Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA and meet the National Standards for the Physical Inspection of Real Estate (NSPIRE) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, 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)]

9-I.A. TENANT SCREENING

The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The PHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the PHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, the PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The PHA must also inform the owner or manager of their rights and obligations under the Violence against Women Act (VAWA) [24 CFR 5.2005(a)(2)].

The PHA must provide the owner with the family's current and prior address (as shown in the PHA records) and the name and address (if known to the PHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The PHA is permitted, but not required, to offer the owner other information in the PHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

The PHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

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

PHA Policy

The PHA will not screen applicants for family behavior or suitability for tenancy.

The PHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the 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
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

PHA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, by email, or by fax.

The family may not submit, and the PHA will not process, more than one (1) RTA at a time.

When the family submits the RTA the PHA 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 PHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, by email, or by fax. The PHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the PHA 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 PHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will be accepted as hard copies, in-person, by mail, by email, or by fax. The PHA will also accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties cannot be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the PHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

PHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

PHA Policy

The PHA does not have any eligible 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.

NSPIRE Standards [Notice PIH 2023-28]

In order to be eligible, the dwelling unit must be in safe and habitable condition. This determination is made using HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the NSPIRE standards, as well as the process for 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 space requirements [24 CFR 5.703(d)(5)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

PHA Policy

The PHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

PHA Policy

The PHA may approve an initial lease term of less than one year when it would improve housing opportunities for the tenant and the shorter term is a local market practice.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The 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].

PHA Policy

The PHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the PHA minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

PHA Policy

The PHA 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 requirements.

PHA Policy

If the dwelling lease is incomplete or incorrect, the PHA 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, by email, or by fax. The PHA will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA 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)]

PHA Policy

The PHA will not review the owner's lease for compliance with state/local law.

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the 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 NSPIRE standards; the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

PHA Policy

The PHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the PHA, the PHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the terms of the RTA and/or the proposed lease will be accepted as hard copies, in-person, by mail, by email, or by fax. The PHA will also accept corrections by phone.

If the PHA 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 PHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the PHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the PHA may not pay any housing assistance payment to the owner.

PHA Policy

Owners who have not previously participated in the HCV program must attend a meeting with the PHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The PHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the PHA. The PHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the PHA will execute the HAP contract. The PHA will not execute the HAP contract until the owner has submitted IRS form W-9. The PHA will ensure that the owner receives a copy of the executed HAP contract.

As required under VAWA, once the HAP contract and lease have been executed and the family has been admitted to the program, the PHA will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to owner, the owner must notify the PHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The PHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

PHA Policy

Where the owner is requesting a rent increase, the PHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the PHA of the rent change or on the date specified by the owner, whichever is later.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside the PHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the PHA's HCV program, whether the family moves to another unit within the PHA's jurisdiction or to a unit outside the PHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the PHA's jurisdiction. This part also covers the special responsibilities that the PHA has under portability regulations and procedures.

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

PHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the PHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member [see 24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that they were imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The PHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).

PHA Policy

If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the PHA based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA will request that the resident request the emergency transfer using form HUD-5383, and the PHA will request documentation in accordance with section 16-IX.D of this plan.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.

The PHA may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

Before granting an emergency transfer, the PHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The PHA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The PHA determines that the family's current unit does not meet space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

Denial of Moves

HUD regulations permit the PHA to deny a family permission to move under the following conditions:

Insufficient Funding

The PHA may deny a family permission to move either within or outside the PHA's jurisdiction if the PHA does not have sufficient funding for continued assistance [24 CFR 982.354(e)(1)]. However, Notice PIH 2016-09 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

PHA Policy

The PHA will deny a family permission to move on grounds that the PHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the PHA; (b) the PHA can demonstrate that the move will, in fact, result in higher subsidy costs (c) the PHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving PHA is not absorbing the voucher.

If the PHA does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed inspection), the family may move to a higher cost unit if the move is within the PHA's jurisdiction. The PHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the PHA's jurisdiction and outside under portability, the PHA will not deny a move due to insufficient funding if the PHA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The PHA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

The PHA will create a list of families whose moves have been denied due to insufficient funding. The PHA will keep the family's request open indefinitely, and when funds become available, the families on this list will take precedence over families on the waiting list. The PHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The PHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

Grounds for Denial or Termination of Assistance

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

PHA Policy

If the PHA has grounds for denying or terminating a family's assistance, the PHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

Restrictions on Elective Moves [24 CFR 982.354(c)]

HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.) In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

PHA Policy

The PHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the PHA's jurisdiction or outside it under portability.

The PHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the PHA's jurisdiction.

The PHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

Approval

PHA Policy

Upon receipt of a family's notification that it wishes to move, the PHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The PHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 10 business days of the PHA's written approval to move. No briefing is required for these families. The PHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when 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.

Zero HAP Families Who Wish to Move [24 CFR 982.455]

A participant who is not receiving any subsidy, but whose HAP contract is still in force, may request a voucher to move to a different unit. The PHA must issue a voucher to move unless it has grounds to deny assistance under the program regulations. However, if the PHA determines no subsidy would be paid at the new unit, the PHA may refuse to enter into a HAP contract on behalf of the family.

PHA Policy

If a zero HAP family requests to move to a new unit, the family may request a voucher to move. However, if no subsidy will be paid at the unit to which the family requests to move, the PHA will not enter into a HAP contract on behalf of the family for the new unit.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the **initial PHA**. The PHA that has jurisdiction in the area to which the family wants to move is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA provides all housing services for the family and bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which receiving PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the PHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

PHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter. If the PHA does deny the move due to insufficient funding, the PHA will notify HUD in writing within 10 business days of the PHA's determination to deny the move.

In addition, the initial PHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

PHA Policy

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the initial PHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking.

Participant Families

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit [see 24 CFR 982.353(b)].

PHA Policy

The PHA will determine whether a participant family may move out of the PHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The PHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2016-09].

Participant Families

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

PHA Policy

For a participant family approved to move out of its jurisdiction under portability, the PHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The PHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require the PHA to provide information on portability to all applicant families that qualify to lease a unit outside the PHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

PHA Policy

No formal briefing will be required for a participant family wishing to move outside the PHA's jurisdiction under portability. However, the PHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).

The PHA will provide the name, address, and phone of the contact for the PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, the PHA will advise the family that the family selects the receiving PHA and notify the initial PHA of which receiving PHA was selected. The PHA will provide the family with contact information for all of the receiving PHAs that serve the area. The PHA will not provide any additional information about receiving PHAs in the area. The PHA will further inform the family that if the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family. In this case, the PHA will not provide the family with information for all receiving PHAs in the area.

The PHA will advise the family that they will be under the receiving PHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures set forth in Chapter 5.

PHA Policy

For participating families approved to move under portability, the PHA will issue a new voucher within 10 business days of the PHA's written approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

PHA Policy

The initial PHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the PHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, 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.

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

PHA Policy

The PHA will use email, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

Initial Notification to the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

PHA Policy

Because the portability process is time-sensitive, the PHA will notify the receiving PHA by phone, fax, or email to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The PHA will pass this information along to the family. The PHA will also ask for the name, address, telephone number, fax and 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 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

PHA Policy

In addition to these documents, the PHA will provide the following information, if available, to the receiving PHA:

Social security numbers (SSNs)

Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

Documentation of participation in a family self-sufficiency (FSS) program

If applicable, information related to the family's health and medical care and disability assistance expense phased-in hardship exemption, including what stage the family is in and how many months remain in that phase-in stage

The PHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2016-09]

The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

PHA Policy

The initial PHA's decision as to whether to accept late billing will be based on internal PHA factors, including the initial PHA's leasing or funding status. If the PHA has not received an initial billing notice from the receiving PHA within the billing deadline and does not intend to honor the late billing, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. In this case, the PHA will send the receiving PHA a written confirmation of its decision by mail.

Among other considerations as to whether to accept late billing will be if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

PHA Policy

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

Annual Updates of Form HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

Denial or Termination of Assistance [24 CFR 982.355(c)(17)]

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

Responding to Initial PHA's Request [24 CFR 982.355(c)]

The receiving PHA must respond via email or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4)).

PHA Policy

The PHA will use email, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)]. An informal hearing is not required when a voucher has expired without the family leasing a unit.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2016-09]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

PHA Policy

The PHA will not require the family to attend a briefing. The PHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the PHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The PHA will suggest that the family attend a full briefing at a later date.

Income Eligibility and Reexamination

The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

PHA Policy

For any family moving into its jurisdiction under portability, the PHA will conduct a new reexamination of family income and composition. However, the PHA will not delay issuing the family a voucher for this reason. Nor will the PHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the PHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(15)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

PHA Policy

When a family ports into its jurisdiction, the PHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

Voucher Term

The term of the receiving PHA's voucher may not expire before 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)]. If the initial PHA extends the term of the voucher, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher [Notice PIH 2016-09].

PHA Policy

The receiving PHA's voucher will expire 30 calendar days from the expiration date of the initial PHA's voucher. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

PHA Policy

The PHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the PHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The PHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]

If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

Administering a Portable Family's Voucher

Portability Billing [24 CFR 982.355(e)]

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

PHA Policy

Unless the PHA negotiates a different amount of reimbursement with the initial PHA, the PHA will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or email.

PHA Policy

The PHA will send its initial billing notice by fax or email or regular mail to meet the billing deadline.

If the receiving PHA fails to send the initial billing by the deadline, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2016-09].

Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]

Annual Reexamination. The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

PHA Policy

The PHA will send a copy of the updated HUD-50058 by **fax or email or** regular mail no later than 10 business days after the effective date of the reexamination.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

Late Payments [Notice PIH 2016-09]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2016-09]

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2016-09.

Denial or Termination of Assistance

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2016-09].

PHA Policy

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2016-09].

PHA Policy

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the PHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice, but no later than 10 business days following the effective date of the termination of the billing arrangement.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].

Chapter 11

REEXAMINATIONS

INTRODUCTION

The PHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Part IV: Non-Interim Reexamination Transaction. This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The PHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

Unlike when performing an interim reexamination or at intake, at annual reexamination, the PHA must determine the income of the family for the previous 12-month period, except where the PHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a Safe Harbor income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the PHA's policies related to streamlined income determinations and the use of Safe Harbor income verifications.

11-I.B. 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].

PHA Policy

The PHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the PHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the PHA may perform a new annual reexamination.

The PHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

PHA Policy

An annual reexamination will generally be processed via first-class mail.

Notification of an annual reexamination will be sent by first-class mail and will contain the date the family must return the packet and provide necessary documentation.

If the family does not return the packet by the deadline, the PHA will send a second packet with a new deadline date.

If a family fails to return the packet without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the PHA must execute a certification attesting to the role and the assistance provided by any such third party.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

PHA Policy

At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the PHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to 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].

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from their parents or is considered a *vulnerable youth* 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.

PHA 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 their parents or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on their own income or the income of their 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 their own income and the income of their parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

11-I.E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(2) and Notice PIH 2023-27]

The PHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA uses a streamlined income determination as indicated in Chapter 7 of this policy. The PHA may also use Safe Harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy.

Except when using streamlined or Safe Harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with PHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The PHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for PHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

Step 1: The PHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the PHA's annual reexamination paperwork.

Step 2: The PHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed within the last reexamination cycle and there are no additional changes, the PHA must use the annual income from the interim to determine the family's total annual income. The PHA may use verification obtained from the interim for this step.
- If the PHA did not perform an interim or there have been changes since the last reexamination, the PHA moves to Step 3.

Step 3: If there were changes in annual income not processed by the PHA since the last reexamination, the PHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the PHA may use documentation of prior-year income to calculate the annual income. For example, the PHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the PHA, for example:
 - Year-end statements
 - Paycheck with year-to-date amounts
 - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the PHA notes discrepancies between EIV and what the family reports, the PHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 11-1 provides detailed examples of how the PHA calculates income from different sources at annual reexamination using the above method.

PHA Policy

When income is calculated using a streamlined income determination or Safe Harbor determination from a means-tested federal public assistance program in accordance with PHA policies in Chapter 7, the above is not applicable. However, where the family disagrees with the PHA or other agency's determination of income or the PHA has other reason to use third-party verification in these circumstances, then the above will apply.

11-I.F. EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

PHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

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 PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27]

11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. The PHA must conduct any interim reexamination within a reasonable period of time after the family request or when the PHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the PHA generally should conduct the interim reexamination not longer than 30 days after the PHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

Reporting

PHAs must require families to report household composition changes; however, PHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The PHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition [24 CFR 960.257(b)(5)].

PHA Policy

All families must report all changes in family and household composition that occur between annual reexaminations within 10 business days of the change.

New Family Members Not Requiring PHA Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

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)].

Although the PHA must verify aspects of program eligibility when any new family member is added, the Streamlining Final Rule removed the requirement that PHAs conduct a reexamination of income whenever a new family member is added. The PHA may state in policy that an income reexamination will be conducted.

If a change in family size causes a violation of 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 family's HAP contract in accordance with its terms [24 CFR 982.403].

PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA **and landlord** prior to the individual moving into the unit.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The PHA will not approve the addition of a foster child or foster adult if it will cause a violation of space standards.

If the PHA determines an individual meets the PHA's eligibility criteria and documentation requirements, the PHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to space standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the PHA determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA 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 household member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit. The PHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

PHA Policy

If a household member ceases to reside in the unit, the family must inform the PHA 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.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Overview

Interim reexaminations for changes in income or expenses may be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The PHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

Interim Decreases [24 CFR 982.516(c)(2) and Notice PIH 2023-27]

A family may request an interim determination of family income for any change since the last determination. However, the PHA may decline to conduct an interim reexamination if the PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The PHA may set a lower threshold in PHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the PHA from setting a dollar-figure threshold.

However, while the PHA has some discretion, HUD requires that the PHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the PHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then PHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

PHA Policy

The PHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

Interim Increases [24 CFR 982.516(c)(3) and Notice PIH 2023-27]

Increases Less than 10 Percent

PHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

Increases 10 Percent or Greater

PHAs must conduct an interim reexamination of family income when the PHA becomes aware that the family's adjusted income has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- PHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- PHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a PHA has the discretion whether to consider a subsequent increase in earned income.

PHA Policy

When a family reports an increase in their earned income between annual reexaminations, the PHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The PHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The PHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the PHA policies in Chapter 14.

Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]

When the family reports an increase in both earned and unearned income at the same time, the PHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The PHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the PHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the PHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the PHA would refer to PHA policy to determine whether an interim was required.

Cumulative Increases [Notice PIH 2023-27]

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the PHA must conduct an interim reexamination in accordance with PHA policy.

Family Reporting

The PHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 982.516(d)].

PHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the PHA may establish policies requiring that families report all changes in income and household composition, and the PHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed [Notice PIH 2023-27].

PHA Policy

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify the PHA of changes either orally or in writing, including email. If the family provides oral notice, the PHA may also require the family to submit the changes in writing, including email.

Within 10 business days of the family reporting the change, the PHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, the PHA will note the information in the tenant file but will not conduct an interim reexamination. The PHA will send the family written notification (which may be emailed) within 10 business days of making this determination informing the family that the PHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, the PHA will determine the documentation the family will be required to submit based on the type of change reported and PHA policies in Chapter 7. The PHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, email, fax, or in person. The PHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

11-II.D. EFFECTIVE DATES [24 CFR 982.516(e) and Notice 2023-27]

Changes Reported Timely [Notice PIH 2023-27]

If the family reports a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

Changes Not Reported Timely [Notice PIH 2023-27]

If the family failed to report a change in family income or composition timely in accordance with PHA policies:

- For rent increases, the PHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the PHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the PHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination;
or
- The first of the month following the most recent previous income examination.

In applying a retroactive change in rent as the result of an interim reexamination, the PHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

PHA Policy

In general, when the family fails to report a change in income or family composition timely, and the change would lead to a rent decrease, the PHA will apply the decrease the first of the month following completion of the interim reexamination.

However, the PHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to PHA management operations. The PHA will decide to apply decreases retroactively on a case-by-case basis.

When the PHA applies the results of interim decreases retroactively, the PHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with PHA policies.

The PHA will also clearly communicate the effect of the retroactive adjustment to the owner.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
 - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
 - If the payment standard amount has *decreased*, during the term of a HAP contract, the PHA is not required to reduce the payment standard as the HAP contract remains in effect. At the family's *second annual* reexamination, the PHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the PHA's policy on decreases in the payment standard).
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5), the new family unit size must be 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 [HCV GB, p. 18-8].

PHA Policy

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

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

The amount and effective date of the new HAP payment

The amount and effective date of the new family share of the rent

The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment.

The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

PART IV: NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27]

Families may experience changes within the household that do not trigger an interim reexamination under PHA policy and HUD regulations but which HUD still requires the PHA to report to HUD via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, PHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the childcare expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

EXHIBIT 11-1: CALCULATING INCOME AT ANNUAL REEXAMINATION

Example 1: Calculating Annual Income at Annual Reexamination Using EIV

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.

<u>Last reexamination – 3/1/2023 Annual Reexamination</u>	
<u>Ruby:</u>	<u>Georgia:</u>
<u>Wages: \$30,000</u>	<u>SSI: \$10,980 (\$915 monthly)</u>

The EIV report pulled on 12/15/2023

<p>Ruby:</p> <p>Wages Total: \$33,651</p> <p>Quarter 3 of 2023: \$8,859 (City Public School)</p> <p>Quarter 2 of 2023: \$8,616 (City Public School)</p> <p>Quarter 1 of 2023: \$8,823 (City Public School)</p> <p>Quarter 4 of 2022: \$7,353 (City Public School)</p>	<p>Georgia:</p> <p>SSI Total: \$10,980</p> <p>2023 benefit \$915 monthly</p>
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<u>Income Reported on Reexamination Application</u>	
Ruby: <u>Wages at City Public School: \$32,000</u> (switched jobs but no permanent change to amount)	Georgia: <u>SSI benefits: \$10,980 (no changes)</u>
<u>Calculating Ruby's wages:</u> Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: \$33,651). Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination). Step 3: Ruby certifies that the \$33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use \$33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.	<u>Calculating Georgia's SSI benefit:</u> Step 1: Determine the prior annual income from EIV (i.e., \$915 x 12 months: \$10,980). Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination). Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia's current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination: COLA: \$64.05 (\$915 x 0.07) New gross SSI benefit: \$11,748.60 (\$979.05 x 12 months)
If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD's verification hierarchy.	
<u>Summary of Annual Income (as reported on the HUD-50058)</u>	
Ruby (Head of Household): Other Wage: \$33,651 Myers Family Total Annual Income: \$45,399	Georgia (Other Youth Under 18): SSI: \$11,748

**Example 2: Calculating Annual Income at Annual Reexamination Using EIV:
Family Disagrees with EIV**

Staff are processing Paul Hewson’s 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha’s Sweets to a part-time job at Viking Bakery. Following HUD’s EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha’s Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination

Wages: \$28,000

The EIV report pulled on 1/15/2024

Wages Total: \$18,271

Quarter 3 of 2023: \$2,500 (Viking Bakery)

Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar)

Quarter 2 of 2023: \$1,300 (Sasha’s Sweets)

Quarter 2 of 2023: \$584 (Larry’s Concessions)

Quarter 2 of 2023: \$2,401 (Viking Bakery)

Quarter 1 of 2023: \$6,500 (Sasha’s Sweets)

Quarter 4 of 2022: \$600 (Sasha’s Sweets)

SS/SSI: No history of benefits

Income Reported on Reexamination Application

Wages: \$0 (permanent change; no longer receiving)

Social Security: \$14,400 (\$1,200 monthly)

Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.

Calculating Wages and SS Benefit

Step 1: Determine prior annual income taking into consideration the 7/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271)

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500.

Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.

Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.

Summary of Annual Income (as reported on the HUD-50058)

Paul (Head of Household): \$14,400 (SS)

Hewson Family Total Annual Income: \$14,400

Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha’s daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

Last reexamination – 11/1/2023 Annual Reexamination

Samantha:

Business income: \$28,000
 VA disability pension: \$12,000
 Child support: \$2,400

Fergus:

Wages: \$8,250
 Other non-wage income: \$3,000 (Go Fund Me online fundraiser)

The EIV report pulled on 9/16/2024

Samantha:

Wages Total: \$0 (no wage data reported since Q1 2023)

Fergus:

Wages Total: \$8,600
 Quarter 1 of 2024: \$2,100 (Ian’s Fish ‘n’ Chips)
 Quarter 1 of 2024: \$500 (Claire’s Healthcare Supplies)
 Quarter 4 of 2023: \$1,000 (Claire’s Healthcare Supplies)
 Quarter 3 of 2023: \$1,800 (The Onion Garden Shop)
 Quarter 2 of 2023: \$3,200 (Ivar’s Fish Haus)

Current Family Circumstances: Income Reported on Reexamination Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA’s annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian’s Fish ‘n’ Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

Samantha:

Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change)

VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change)

Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)

Fergus:

Wages: \$6,000

Calculating Samantha’s Net Business Income

Step 1: Determine prior annual net business income (i.e., \$28,000 on last HUD–50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

Calculating Samantha’s VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was \$1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows \$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The PHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

Calculating Fergus' Other Non-Wage Income

Step 1: Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD- 50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD-50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.

Summary of Annual Income (as reported on the HUD-50058)

Samantha (Head of Household):

Own business: \$18,000

Pension: \$12,300

Child support: \$1,200

Fergus (Co-head):

Wages: \$9,360

Poole Family Total Annual Income: \$40,860

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a PHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the PHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the PHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA will use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the PHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the PHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the PHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

PHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the PHA terminate housing assistance payments on behalf of the family at any time.

PHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the PHA will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the PHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

PHA 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. In such cases the PHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, the PHA will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The PHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

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 Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2018-24]

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

PHA 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 circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The PHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

Lifetime Registered Sex Offenders [Notice PIH 2012-28]

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with their parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

The PHA must immediately terminate program assistance for deceased single member households.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the PHA to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

PHA Policy

The PHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The PHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

The PHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA 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.

PHA Policy

The PHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The PHA 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.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

**Other Authorized Reasons for Termination of Assistance
[24 CFR 982.552(c), 24 CFR 5.2005(c), 24 CFR 984.101(d)]**

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking as reasons for terminating the assistance of a victim of such abuse.

Additionally, per 24 CFR 984.101(d), PHAs are no longer permitted to terminate assistance to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation.

PHA Policy

The PHA **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 three years.

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

The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the PHA.

A family member has engaged in or threatened violent or abusive behavior toward PHA 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 PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

PHA Policy

If the family is absent from the unit for more than 30 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Asset Limitation [24 CFR 5.618; Notice PIH 2023-27]

The PHA has discretion with respect to the application of the asset limitation at annual and interim reexamination. The PHA may adopt a written policy of total nonenforcement, enforcement, or limited enforcement as well as adopting exception policies.

PHA Policy

The PHA has adopted a policy of total nonenforcement of the asset limitation for all program participants. The asset limitation only applies to initial eligibility determinations for new admissions to the PHA's HCV program.

Insufficient Funding [24 CFR 982.454]

The PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

PHA Policy

The PHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the PHA determines there is a shortage of funding, prior to terminating any HAP contracts, the PHA will determine if any other actions can be taken to reduce program costs.

In the event that the PHA decides to stop issuing vouchers as a result of a funding shortfall, and the PHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the PHA resumes issuing vouchers, the PHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the PHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the PHA will inform the local HUD field office. The PHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so in accordance with the following criteria and instructions:

A lottery draw will be used to determine which families will be terminated from the program, excluding elderly and disabled families.

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The PHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the PHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the PHA may choose to take when it has discretion, and outlines the criteria the PHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the PHA's intent to terminate assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

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

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

PHA 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 PHA request.

Repayment of Family Debts

PHA Policy

If a family owes amounts to the PHA, as a condition of continued assistance, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the PHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

PHA Policy

The PHA 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

Use of Criminal Conviction Records after Admission [24 CFR 5.903]

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

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

The PHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

PHA Policy

The PHA will consider the following facts and circumstances when making its decision to terminate assistance:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

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

- Any statements made by witnesses or the participant not included in the police report

- Whether criminal charges were filed

- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

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

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

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

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

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

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

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

12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, OR HUMAN TRAFFICKING

This section describes the protections against termination of assistance that the Violence against Women Act (VAWA) provides for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking. For general VAWA requirements, key VAWA definitions, and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

VAWA Protections against Termination

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

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

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit [see 24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [see 24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking [see 24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, stalking, or human trafficking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

PHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, stalking or human trafficking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within an immediate time frame

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the PHA's determination that they are an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

PHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the PHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA the explicit authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others” without terminating assistance to “or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant” [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [FR Notice 3/16/07].

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

PHA Policy

The PHA will terminate assistance to a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-IX.D. The PHA will also consider the factors in section 12-II.D. Upon such consideration, the PHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the PHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

PHA Policy

Whenever a family's assistance will be terminated, the PHA will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require.

When the PHA notifies an owner that a family's assistance will be terminated, the PHA will, if appropriate, advise the owner of their right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. VAWA requires PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household's housing benefits.

PHA Policy

Whenever the PHA decides to terminate a family's assistance because of the family's action or failure to act, the PHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382 and form HUD-5380. The PHA will request in writing that a family member wishing to claim protection under VAWA notify the PHA within 14 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, and human trafficking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant’s lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of PHA policies relating to units in foreclosure.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

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).

PHA Policy

If the eviction action is finalized in court, the owner must provide the PHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, stalking, or human trafficking is limited by the Violence against Women Act (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

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

PHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

PHA Policy

The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

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

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

PHA Policy

The family must comply with lease requirements regarding written notice to the owner.

The family must provide written notice to the PHA 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 composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

PHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA 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 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.

PHA 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.

PHA 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 PHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).

- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

Chapter 13

OWNERS

INTRODUCTION

Owners play a major role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the 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

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for PHAs]

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.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. PHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

PHA Policy

The PHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The PHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers

- Contacting property owners and managers by phone or in-person

Holding owner recruitment/information meetings when possible

- Participating in community-based organizations comprised of private property and apartment owners and managers

- Developing working relationships with owners, apartment associations, industry investor groups, and real estate brokers associations

- To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Website information

Handbook for owners new to the program

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.

PHA Policy

All PHA 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 PHA will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The PHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated PHA contact person.

- Coordinating inspection and leasing activities between the PHA, the owner, and the family.

- Initiating telephone contact with the owner to explain the inspection process and providing an inspection booklet and other resource materials about HUD housing quality standards.

- Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.

- Contacting owners via emails or texts to disseminate information.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the PHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

PHA 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 PHA. The PHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The 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 requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) 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 least biennially to ensure that the unit continues to meet inspection requirements. See Chapter 8 for a discussion of the NSPIRE standards and policies for inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the PHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the National Standards for the Physical Inspection of Real Estate (NSPIRE), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Act (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family [see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); 24 CFR 982.452(b)(1); and FR Notice 1/4/23]

13-I.D. OWNER QUALIFICATIONS

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

The PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

The PHA must not approve a tenancy 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; Form HUD-52641, Section 13]

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
- Any member of the Congress of the United States

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

Immediate family member means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA must include the following [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis 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 their 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;
- 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.

PHA Policy

In considering whether to request a conflict of interest waiver from HUD, the PHA will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the PHA to disapprove a request for tenancy for various actions and inactions of the owner.

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].

PHA Policy

The PHA will refuse to approve a request for tenancy if the PHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of noncompliance with inspection standards for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

- (i) Threatens the right to peaceful enjoyment of the premises by other residents;
- (ii) Threatens the health or safety of other residents, 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; or

The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the PHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

PHA Policy

The PHA 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).

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the 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

13-II.A. 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 the family approved by the PHA to occupy the unit.

The HAP contract is used for all HCV tenant-based program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the PHA's HCV program.

When the PHA has determined that the unit meets program requirements and the tenancy is approvable, the PHA and owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the PHA representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

PHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

PHA Policy

The PHA has not adopted a policy that defines when the housing assistance payment by the PHA 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
- 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 tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the PHA must make monthly HAP payments to the owner on behalf of the family at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The 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.

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 and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the 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 rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of 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 overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By accepting 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 NSPIRE standards; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The 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 late 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 [24 CFR 982.311(b)]

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.

PHA Policy

The owner must inform the PHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the PHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the PHA 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 PHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the PHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with NSPIRE standards
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the 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 of 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.

PHA Policy

Before the PHA invokes a remedy against an owner, the PHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the PHA 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 PHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The 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 housing assistance payment 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
- The PHA elects to terminate the HAP contract.

PHA Policy

The PHA 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 size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;

The unit does not meet NSPIRE standards [24 CFR 982.404] – see Chapter 8;

The family breaks up [HUD Form 52641] – see Chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

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].

PHA Policy

Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner.

The PHA cannot make any HAP payment for any month after the month the family vacates the unit.

The owner is not entitled to any housing assistance payment after this period and must return to the PHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the 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.

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.

PHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The PHA 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 PHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the PHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;

- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

- The effective date of the HAP contract assignment;

- A written agreement to comply with the terms of the HAP contract; and

- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the PHA 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 PHA will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE [Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional protections for tenants also applies.

PHA Policy

If a property is in foreclosure, the PHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The PHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The PHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that the PHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to NSPIRE standards), or due to an inability to identify the new owner, the PHA will either use the funds to pay:

The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or

For the family's reasonable moving costs, including security deposit costs.

The PHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

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

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233].

PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

PHA Policy

To ensure that the PHA’s HCV program is administered according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The PHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family or owner.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

At every regular reexamination, PHA staff will explain any changes in HUD regulations or PHA policy that affect program participants.

The PHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The PHA will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.

The PHA will provide each PHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

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 compliance with NSPIRE standards [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

PHA Policy

In addition to the SEMAP quality control requirements, the PHA will employ a variety of methods to detect errors and program abuse.

The PHA routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number and any other private or public databases available to the PHA.

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 PHA 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.

PHA Policy

The PHA 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 PHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

PHA Policy

The PHA will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the PHA Will Investigate

PHA Policy

The PHA 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 PHA 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 PHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to sign consent forms for the release of additional information.

Analysis and Findings

PHA Policy

The PHA 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 PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

PHA Policy

In the case of family-caused errors or program abuse, the PHA 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 PHA 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

PHA Policy

The PHA 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 PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

PHA Policy

Increases in the family share will be implemented on the first of the month following a written 30-day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the PHA or the PHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]

PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the PHA will terminate the family's assistance in accordance with the policies in Chapter 12.

PHA Reimbursement to Family [HCV GB p. 22-12]

PHA Policy

The PHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

PHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA 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 PHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g. income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The PHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., NSPIRE 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].

PHA Policy

In cases where the owner has received excess subsidy, the PHA 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:

PHA 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 PHA

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 PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the PHA

Residing in the unit with an assisted family

Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

Remedies and Penalties

When the PHA determines that the owner has committed program abuse, the PHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any PHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

De Minimis Errors [24 CFR 5.609(c)(4)]

The PHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

PHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when PHAs make de minimis errors in the income determination. Families will not be required to repay the PHA in instances where the PHA miscalculated income resulting in a family being undercharged for rent. PHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the PHA's de minimis error in income determination.

PHA Policy

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

Prohibited Activities

PHA Policy

Any of the following will be considered evidence of program abuse by PHA 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 PHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

PHA Policy

When the PHA determines that program abuse by an owner, family, or PHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

The PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 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; New HCV GB, *Special Housing Types*]

INTRODUCTION

The PHA may permit a family to use any of the special housing types discussed in this chapter. However, the PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types. Unless specifically modified by the regulations, NSPIRE standards apply to special housing types (Single Room Occupancy, Congregate Housing, Group Homes, Shared Housing, Manufactured Homes, Homeownership units) [Notice PIH 2023-28].

PHA Policy

Families will be permitted to use any special housing types.

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]. A single unit cannot be designated as more than one type of special housing. The PHA cannot give preference to households that wish to live in any of these types of housing and cannot require households to select any of these types of housing [New HCV GB, *Special Housing Types*, p. 3].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605; Form HUD-52641; New HCV GB,
Special Housing Types, p. 4]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Single room occupancy (SRO) housing.”

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the PHA’s payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

NSPIRE requirements described in Chapter 8 apply to SRO housing except that sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

- *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, large 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 males, 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 to all persons sharing them 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.

For SRO housing, 24 CFR 5.703(d) only applies to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d). Because no children live in SRO housing, the NSPIRE standards applicable to lead-based paint do not apply.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB,
Special Housing Types, p. 6]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Congregate housing."

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area for the assisted family. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

NSPIRE requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below. Congregate housing is not subject to the requirement that the dwelling unit must have a kitchen area. In place of the NSPIRE standards related to food preparation and refuse disposal, congregate housing must have a refrigerator of appropriate size in the private living area of each resident, a central kitchen and dining facilities located within the premises and accessible to the residents, and food service for the residents, that is not provided by the residents themselves.

The congregate housing must contain adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

The NSPIRE standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

PART III: GROUP HOME

[24 CFR 982.610 through 982.614; Form HUD-52641; New HCV GB,
Special Housing Types, p. 8]

15-III.A. OVERVIEW

A group home is a state-approved (licensed, certified, or otherwise approved in writing by the state) 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. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Group home."

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size (voucher size) for an assisted occupant of a group home must be zero- or one-bedroom. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro rata share of the payment standard for the group home size. The pro rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home. The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

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 pro rata share of the family unit size to the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro rata portion of the reasonable rent for the group home. In determining reasonable rent, the PHA must consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

The entire unit must comply with NSPIRE requirements described in Chapter 8, except for the standards that relate to sanitary facilities, food preparation and refuse disposal, space and security, structure and materials, and site and neighborhood and stated below.

- *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. Doors and windows accessible from outside the unit must be lockable.
- *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 disturbing noises and reverberations, and other 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 unless a child under the age of six is expected to reside in the unit.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618; Form HUD-52641; Notice PIH 2021-05;
New HCV GB, *Special Housing Types*, p. 11]

15-IV.A. OVERVIEW

Families in markets with tight rental conditions or with a prevalence of single-family housing may determine a shared housing living arrangement to be a useful way to secure affordable housing. PHAs offering shared housing as a housing solution may also experienced some reduction in the average per-unit-cost (PUC) paid on behalf of assisted families.

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The unit may be a house or an apartment. 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.

Shared housing may be offered in a number of ways, including for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room) run by a private company [Notice PIH 2021-05].

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 shared housing is offered as a housing option, HUD encourages PHAs to consider ways in which the families may be assisted in finding shared housing, including for-profit shared housing matching (such as roommates or single-family homes) and online sites that charge a fee for their matching services, or nonprofit shared housing matching services. HUD further encourages PHAs to include information about this housing possibility in the family's voucher briefing.

PHA Policy

The PHA will provide information to families regarding the shared housing option, including a listing to families of any known for-profit or nonprofit shared housing matching services in the community at briefing, and upon request. Families will be advised they can conduct their own internet search. Families will be cautioned to not enter into any rental agreement or pay any deposit or rental payment until the tenancy is approved by the PHA.

PHAs should be aware of potential local legal barriers to HCV participants using shared housing, which can create additional obstacles for shared housing:

- Municipalities may have occupancy limits for the number of unrelated persons who may share a housing unit.
- Local zoning codes for single family housing may restrict occupancy in certain areas to households whose family members are related by blood.

PHAs should work with local jurisdictions to find solutions that encourage affordable housing and are consistent with the Fair Housing Act, Title VI, and other federal, state, and local fair housing laws. PHAs should inform HUD if they encounter barriers to shared housing that may conflict with fair housing laws.

PHA Policy

The PHA will work with local jurisdictions as necessary to identify solutions consistent with fair housing laws and will inform HUD if the PHA encounters barriers to shared housing that conflict with fair housing laws.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Shared housing.”

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size (voucher size) or the pro rata share of the payment standard for the shared housing unit size.

The pro rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private, non-shared space by the total number of bedrooms in the unit.

Example: Family holds a two-bedroom voucher.
Shared housing unit size: bedrooms available to assisted family = 2
Total bedrooms in the unit: 3
2 Bedrooms for assisted family
÷ 3 Bedrooms in the unit
.667 pro rata share
2 BR payment standard: \$1200
3 BR payment standard: \$1695 $\$1695 \times .667$ (pro rata share) = \$1131 \$1131 is
lower than the \$1200 payment standard for the 2 BR family unit size \$1131 is
the payment standard used to calculate the HAP

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted family living in shared housing is the pro rata share of the utility allowance for the shared housing unit.

Example: A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200
The utility allowance for a 2-bedroom unit equals \$100
The pro rata share of the utility allowance is \$150 (3/4 of \$200)
The PHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the PHA may consider whether sanitary and food preparation areas are private or shared.

15-IV.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

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.

NSPIRE 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 (voucher size). A zero-bedroom or one-bedroom unit may not be used for shared housing.

PART V: COOPERATIVE HOUSING

[24 CFR 982.619; New HCV GB, *Special Housing Types*, p. 14]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.” The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. It 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.

The occupancy agreement or lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner, and the rent must be reasonable as compared to comparable unassisted units.

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Cooperative housing.”

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the gross rent (monthly carrying charge for the unit, plus any utility allowance) minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

All standard NSPIRE requirements apply to cooperative housing units. There are no additional NSPIRE requirements. The PHA remedies described in 24 CFR 982.404 do not apply. Rather, if the unit and premises are not maintained in accordance with NSPIRE standards, the PHA may exercise all available remedies regardless of whether the family or cooperative is responsible for the breach of NSPIRE standards.

No housing assistance payment can be made unless unit meets NSPIRE and the defect is corrected within the period as specified by the PHA and the PHA verifies correction (see Chapter 8).

In addition to regular NSPIRE deficiencies, breaches of NSPIRE standards by the family include failure to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement [HCV GB].

PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624; FR Notice 1/18/17; New HCV GB,
Special Housing Types, p. 15;]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in three 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 NSPIRE requirements as provided in 15-VI.D. below.
- (2) A family can purchase a manufactured home under the Housing Choice Voucher Homeownership program.
- (3) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL REQUIREMENTS 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 designated HAP Contract (form HUD-52642) and designated Tenancy Addendum (form HUD 52642-A) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION [FR Notice 1/18/17]

Payment Standards

The PHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

Utility Allowance

The PHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender, or utility company.

Space Rent

The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid utilities.

Amortization Costs

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the manufactured home space rent (including other eligible housing expenses) minus the TTP.

Rent Reasonableness

Initially, and at least 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 housing assistance payment, the owner of the manufactured home space certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the same manufactured home park or elsewhere.

If requested by the PHA, the owner must give the PHA information on rents charged by the owner for other manufactured home spaces.

15-VI.D. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)

Under either type of occupancy described in 15-VI.A. above, the manufactured home must meet all NSPIRE 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.

PART VII: HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

PHA Policy

The PHA has instituted a minimum homeowner down payment requirement of at least three percent of the purchase price and requires that at least one percent of the purchase price come from the family's personal resources.

There are two forms of homeownership assistance described in the regulations: monthly homeownership assistance payments and single down payment assistance grants. However, PHAs may not offer down payment assistance until and unless funding is allocated by Congress. Since this has not yet happened, only monthly homeownership assistance may be offered.

PHA Policy

The PHA will offer the monthly homeownership assistance payments to qualified families.

The PHA may choose not to offer homeownership assistance. However, the PHA must offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

If the PHA offers the homeownership option, participation by the family is optional. However, the family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time, homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the PHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

PHA Policy

The PHA will not establish a higher minimum income standard for disabled and/or non-disabled families.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term *full-time employment* means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.

PHA Policy

Families will be considered “continuously employed” if the break in employment does not exceed four months.

The PHA will count self-employment in a business when determining whether the family meets the employment requirement.

- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option

- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

PHA Policy

The PHA will impose additional eligibility requirements. To be eligible to participate in the homeownership option, families must meet the following criteria:

The family has had no family-caused violations of HUD’s Housing Quality standards within the past year.

The family is not within the initial one-year period of a HAP Contract.

The family owes no money to the PHA.

The family has not committed any serious or repeated violations of a PHA-assisted lease within the past year.

The family must be in good standing with their landlord and WH with regard to their family obligations and contracts. The family must satisfy the prerequisite of being in “good standing” prior to receiving a Certificate of Eligibility for the homeownership program. For the purposes of the homeownership program, “good standing” is defined as meeting all conditions prior to and during the homeownership shopping period.

Within the past year, the family has met all the HUD and WH family obligations under the HCV program.

Within the past year and throughout the homeownership shopping period, the family may not owe WH or any other housing authority any outstanding debt nor enter into a repayment agreement.

No family member may have a present ownership interest in a second residence while receiving homeownership assistance.

WH will not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option and has defaulted on a mortgage securing debt incurred to purchase the home.

An applicant must verify a minimum of \$1500 set aside for homeownership expenses.

Regular seasonal employees and self-employed workers, who have a demonstrated work history averaging thirty (30) hours per week on an annualized basis and an annualized income at or above the minimum income, will be considered continuously employed for purposes of HCV Homeownership program eligibility and subsequent employment requirements.

The applicant head of household, spouse or adult on the mortgage document must remain continuously employed (no less than 30 hours per week) while participating in the program.

For eligibility purposes, continuous employment is defined as: “No gap in employment lasting more than twelve weeks total during the past year.” Continuous employment for seasonal employees and self-employed workers is defined as two consecutive years of regular seasonal employment where WH ‘annualizes’ family income when determining family rent.

Part-time employment by both parties, totaling over 30 hours per week, does not constitute full-time employment by either party.

WH has the discretion to interpret small gaps in employment. Permissible gaps can only occur if loss of employment resulted from measures beyond the employee’s control (layoff, medical emergency); and did not result in an employment gap of more than twelve consecutive weeks.

15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]

Unless otherwise provided (under the homeownership option), the PHA may limit homeownership assistance to families or purposes defined by the PHA and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

If the PHA limits the number of families that may participate in the homeownership option, the PHA must establish a system by which to select families to participate.

PHA Policy

The PHA will administer up to five new homeownership units per year. The PHA may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, the PHA may reduce the number of homeownership units offered in subsequent years.

Families must join and participate in the Family Self-Sufficiency (FSS) Program for at least six months or have graduated from the program in the past year.

All families must meet eligibility requirements as defined in Section 15-VII.B. of this plan.

The family must be in good standing with their landlord and WH with regard to their family obligations and contracts. The family must satisfy the prerequisite of being in “good standing” prior to receiving a Certificate of Eligibility for the homeownership program. For the purposes of the homeownership program, “good standing” is defined as meeting all conditions prior to and during the homeownership shopping period.

Within the past year, the family has met all the HUD and WH family obligations under the HCV program.

Within the past year and throughout the homeownership shopping period, the family may not owe WH or any other housing authority any outstanding debt nor enter into a repayment agreement.

No family member may have a present ownership interest in a second residence while receiving homeownership assistance.

WH will not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option and has defaulted on a mortgage securing debt incurred to purchase the home.

An applicant must verify a minimum of \$1500 set aside for homeownership expenses.

Regular seasonal employees and self-employed workers, who have a demonstrated work history averaging thirty (30) hours per week on an annualized basis and an annualized income at or above the minimum income, will be considered continuously employed for purposes of HCV Homeownership program eligibility and subsequent employment requirements.

The applicant head of household, spouse or adult on the mortgage document must remain continuously employed (no less than 30 hours per week) while participating in the program.

For eligibility purposes, continuous employment is defined as: “No gap in employment lasting more than twelve weeks total during the past year.” Continuous employment for seasonal employees and self-employed workers is defined as two consecutive years of regular seasonal employment where WH ‘annualizes’ family income when determining family rent.

Part-time employment by both parties, totaling over 30 hours per week, does not constitute full-time employment by either party.

WH has the discretion to interpret small gaps in employment. Permissible gaps can only occur if loss of employment resulted from measures beyond the employee’s control (layoff, medical emergency); and did not result in an employment gap of more than twelve consecutive weeks.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, the PHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
 - A public housing or Indian housing unit;
 - A unit receiving Section 8 project-based assistance;
 - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
 - A college or other school dormitory;
 - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the PHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.

Families may enter into contracts of sale for units not yet under construction. However, the PHA will not commence homeownership assistance for the family for that unit until:

1. Either the responsible entity completes the environmental review as required by 24 CFR part 58 and HUD approved the environmental certification and request for release of funds prior to commencement of construction or HUD performed an environmental review under CFR part 50 and notified the PHA in writing of environmental approval of the site prior to construction commencement; and
 2. Construction of the unit has been completed and the unit has passed the required NSPIRE inspection and independent inspection as addressed elsewhere in this chapter.
- For PHA-owned units all of the following conditions must be satisfied:
 - The PHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;
 - The unit is not ineligible housing;
 - The PHA obtains the services of an independent agency to inspect the unit for compliance with NSPIRE standards, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

The PHA must not approve the unit if the PHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

PHA Policy

The family will be allowed 120 days to identify a unit and submit a sales contract to the PHA for review. The family will be allowed an additional 120 days to close on the home. PHAs may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 125 days. The maximum amount of time a family will be given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any active lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to the PHA prior to the expiration of the period for which the extension is being requested. The PHA will approve or disapprove the extension request within 10 business days. The family will be notified of the PHA's decision in writing.

The family will be required to report their progress on locating and purchasing a home to the PHA every 30 days until the home is purchased.

If the family cannot complete the purchase of a unit within the maximum required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be issued a voucher to lease a unit.

15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA. HUD suggests the following topics for the PHA-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The PHA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the PHA does not use a HUD-approved housing counseling agency to provide the counseling, the PHA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

PHA Policy

Families will not be required to participate in ongoing counseling after commencement of homeownership assistance.

15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

The PHA may not commence monthly homeownership assistance payments for a family until the PHA has inspected the unit and has determined that the unit passes NSPIRE standards.

PHA Policy

When the family locates a home they wish to purchase and submits a copy of their purchase offer/contract, the PHA will conduct an NSPIRE inspection within 10 business days. Any items found not to meet NSPIRE standards must be repaired before the unit can be determined eligible for the homeownership program.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

PHA Policy

The family must hire an independent professional inspector, whose report must be submitted to the PHA for review. This inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector cannot be a PHA employee or contractor.

The PHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with NSPIRE standards.

PHA Policy

The PHA will review the professional report in a timely fashion and, based on the presence of major physical problems, may disapprove the purchase of the home.

If the PHA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

Contract of Sale

Before commencement of monthly homeownership assistance payments, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.
- A contract for the sale of a unit not yet under construction must meet all above requirements, and requirements below. Commencement of construction in violation of the below requirements voids the purchase contract.
 - The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628; and
 - The construction will not commence until the environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Environmental approval may be conditioned on the contracting parties' agreement to modification to the unit design or to mitigation actions.

PHA Policy

WH will provide the buyer with an *Addendum to the Residential Purchase Agreement*. Both the buyer and seller must execute the earnest money agreement and *Addendum*.

The *Agreement of Sales* will be in the packet given to the voucher holder and shall contain the following provisions if the unit is not yet constructed:

The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site has received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628.

The construction will not commence until the environmental review has been completed and the seller has received written notice from the PHA that environmental approval has been obtained. Conduct of the environmental review may not necessarily result in environmental approval, and environmental approval may be conditioned on the contracting parties' agreement to modifications to the unit design or to mitigation actions.

Commencement of construction in violation of either of the above two provisions voids the purchase contract and renders homeownership assistance under 24 CFR part 982 unavailable for purchase of the unit.

Disapproval of a Seller

In its administrative discretion, the PHA may deny approval of a seller for the same reasons a PHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING [24 CFR 982.632]

The PHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

PHA Policy

As a check against predatory lending, the PHA will review the financing of each purchase transaction, including estimated closing costs. The PHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The PHA also will not approve "seller financing" or "owner-held" mortgages. Beyond these basic criteria, the PHA will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least three percent of the sales price with one percent of the down payment coming from the purchaser's personal funds. The PHA will not require that the family have any more than the minimum of one percent of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

The PHA will approve a family's request to utilize its Family Self-Sufficiency escrow account after final disbursement for down payment and/or closing costs when purchasing a unit under the HCV homeownership option.

It is the responsibility of the family to secure financing for the home purchase. The issuance of the *Certificate of Eligibility* does not guarantee that a family can secure financing for a home purchase. The Program Officer and/or partner agencies will provide guidance to potential home buyers to ensure they avail themselves of various down payment assistance programs, optimum loan packages, mortgage interest rates, and ways to avoid predatory lending practices.

The PHA demonstrates its capacity to administer the HCV Homeownership program by requiring the financing to purchase a home either be provided, insured, or guaranteed by the state or Federal government; comply with secondary mortgage

market underwriting requirements; or comply with generally accepted private sector underwriting standards.

Qualified participants may use the value of rental assistance as a form of “income” to help them qualify for a mortgage. Their assistance may be applied directly against their mortgage payment, therefore enabling a borrower to qualify for a home purchase.

There is no prohibition against using local/state grants or other subsidized financing in conjunction with the HCV Homeownership Program. The program can be combined with a variety of mortgage loan products and other HUD programs to assist a potential home buyer in achieving the most favorable interest rate and terms of purchase.

WH may not influence a family’s choice of lending options by limiting the use of homeownership assistance to particular units, neighborhoods, developers, lenders or require a family to use a set financing approach. However, HUD encourages local public housing authorities to develop partnerships with lenders to better serve the needs of families. WH will counsel the family to avoid predatory lenders or lending practices. WH will honor any financing package that arises from any lender approved by the WH Mortgage Department.

Mortgages with balloon payments, interest only, or variable interest rates are not allowed under Westbrook Housing’s program. The buyer may not enter into a seller financing or lease-purchase agreement under this program.

WH reserves the right to review lender qualifications and the loan terms before authorizing homeownership assistance. WH may disapprove proposed financing of the debt if WH determines that the debt is unaffordable. In making this determination, WH will take into account family expenses such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses, in addition to the participant’s income.

Independent of the lender’s requirements, WH has established criteria that the family cannot have a family share in excess of 45% of the monthly adjusted income at the time of the initial closing.

Refinancing the property, without prior written approval from WH, may result in termination of the HCV Homeownership assistance.

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD [form HUD-52649]. In the statement, the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the PHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the PHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the PHA before moving out of the home.
- The family must notify the PHA if the family defaults on the mortgage used to purchase the home.
- The family must provide the PHA with information on any satisfaction or payment of the mortgage debt.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

PHA Policy

Any inspection the PHA conducts after the initial inspection will be done on an advisory basis. The family will be encouraged to make the repairs, but will not be required to do so as a condition of ongoing assistance.

WH will reexamine the family's income and composition on an annual basis.

After purchase of the home, the family must continue to adhere to the “HUD Statement of Homeowner Obligations” and the *WH Statement of Family Obligations* in order to continue to receive the monthly housing assistance payment

Non-elderly and non-disabled families are required to annually document continued compliance with the full-time work requirement of the program by annual completion income verification.

A family must disclose all changes in income within ten (10) business days of the change and at the annual reexamination. Failure to disclose or accurately report changes will jeopardize a family's continued participation in this program. A family may not add an adult household member without prior WH approval. WH will deny admission to any individual who would otherwise not qualify for admission to the program due to criminal history, drug related history, or registry on a sex-offender list.

WH may deny or terminate assistance for violation of participant obligations as described in the "HUD Statement of Homeowner Obligations", the *WH Statement of Family Obligations*, or other program obligations.

The applicant head of household or spouse must remain continuously employed (no less than 30 hours per week) while participating in the program.

Part-time employment by both parties, totaling over 30 hours per week, does not constitute full-time employment by either party.

For continued eligibility purposes, continuous employment is defined two ways. Continuous employment by the head, spouse or co-head defined as full time employment (average of 30 hours per week) with no gap in employment lasting more than 13 weeks total (30 hours x 48 weeks = 1,440 hours). Or, earned income received by the head, spouse or co-head during the past year greater than the state minimum wage times 1560 hours ($\$13.80 \times 1560 = \$21,528$).

The employment requirement is not applicable to elderly families or those whose head or co-head of household, spouse or sole member experience permanent disability.

If a working family is subsequently determined by WH to now qualify as a "disabled family," as defined by HUD, the full-time employment requirement is no longer applicable to that family.

WH will consider mitigating circumstances where certain lapses in employment prohibit the family from meeting its continuous employment obligation. These include receipt of Unemployment Insurance Benefits due to layoff; absences defined under the Family Medical Leave Act; receipt of Worker's Compensation benefits.

WH will allow week-for-week substitutions whenever of any of these benefits are received.

The participant must return to full-time employment within 30 days after exhaustion of unemployment benefits. Failure to return to full-time employment

(30 hours per week) within 30 days will generate a 60-day *Notice to Correct*. Failure to correct will result in a correctable 30-day *Notice of Termination*.

A participant who is employed but is on leave from work due to maternity leave, FMLA or is receiving Workman's Compensation, is exempt from the full-time employment requirement during the period of approved leave from work. A participant must return to full-time employment within 30 days after exhaustion of applicable benefits. Willful failure to return to full-time employment (30 hours per week), after 30 days, will generate a 60-day *Notice to Correct*. Failure to correct will result in a correctable 30-day *Notice of Termination*.

All changes in family composition must be reported to the Program Officer. All new family members must be approved as eligible residents before moving into the residence.

Family guests are permitted for a period not to exceed 30 days in any calendar year. WH may consider persons who exceed the 30-day occupancy limit, or who use the residence as a personal mailing address, unauthorized family members. The family may be in violation of their family obligations and WH may take appropriate action up to and including termination of assistance.

In addition to completing the HUD Statement of Homeowner Obligations and WH's Statement of Family Obligations Addendum prior to the issuance of the homeownership voucher, agreeing to comply with all family obligations under the Homeownership Program, including but not limited to:

A home equity loan or any refinancing may not be acquired without the prior written consent of WH.

The family must, at annual reexamination, document that the family is current on mortgage, insurance, escrow accounts, repair reserve account, and utility payments.

The family is prohibited from moving more than one time in a one (1) year period. The family may be required to participate in pre- and post-purchase homeownership counseling prior to re-housing.

Sign a release allowing WH, counselors, realtors, and participating lenders to exchange information on the borrower.

Agree to maintain the condition of the home to comply with minimum HUD Housing Quality Standards (HQS).

Acknowledge that the termination of assistance shall be in accordance with program requirements and the Administrative Plan.

Acknowledge that the family is obligated for the whole mortgage payment in the event of termination of assistance.

Disclose any and all changes of family composition and family income immediately to WH within 10 business days.

Agree that the family must immediately notify WH of any late payment, delinquency notices, or default notices and must agree to participate in default counseling with a designated agency to become current.

Agree to attend any identified financial, homeowner or post purchase counseling during time of assistance.

Agree to the continued employment requirement as stated in WH's Administrative Plan.

Agrees that should they itemize deductions for IRS taxing purposes, they shall deduct in accordance with the IRS opinion that provides for a prorate deduction of the interest on a homeownership mortgage and homeownership taxes.

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

PHA Policy

Upon the death of a family member who holds, in whole or in part, title to the home, homeownership assistance may continue, pending settlement of the decedent's estate. The home must be solely occupied by remaining family members in accordance with 24 CFR 982.551(h).

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the PHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher program. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The PHA must adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) must include amounts allowed by the PHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The PHA allowance for maintenance expenses;

PHA Policy

The monthly allowance for maintenance expenses will be .025% of the sale price.

- The PHA allowance for costs of major repairs and replacements;

PHA Policy

The monthly allowance for major repairs and replacements will be .075% of the sale price.

- The PHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

The PHA does not have the discretion to exclude any of the listed homeownership expenses or to add any additional items.

Homeownership expenses for a cooperative member include amounts allowed by the PHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The PHA allowance for maintenance expenses;
- The PHA allowance for costs of major repairs and replacements;
- The PHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

PHA Policy

The PHA will use the following amounts for homeownership expenses:

Monthly homeownership payment. This includes principal and interest on initial mortgage debt, taxes and insurance, public assessments, and any mortgage insurance premium, if applicable.

Utility allowance. The PHA's utility allowance for the unit, based on the current HCV utility allowance schedule.

Monthly maintenance/major repair/replacement allowance. A single monthly maintenance/repair/replacement allowance will be provided at \$120 per month.

Monthly co-op/condominium assessments. If applicable, the monthly amount of co-op or condominium association operation and maintenance assessments.

Monthly principal and interest on debt for improvements. Principal and interest for major home repair, replacements, or improvements, if applicable.

Land lease payments. Land lease payments where a family does not own fee title to the real property on which the home is located.

The PHA may pay the homeownership assistance payments directly to the family, or at the PHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

PHA Policy

The PHA's housing assistance payment will be paid directly to the family. It will be the family's responsibility to make the entire payment to the lender. The PHA may make an exception if the family requests the payment to go directly to the lender, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

15-VIII. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

PHA Policy

The PHA will not accept families from another HCV Homeownership Program.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance or with voucher homeownership assistance.

The PHA must determine that all initial requirements have been satisfied if a family that has received homeownership assistance wants to move with continued homeownership assistance. However, the following do not apply:

- The requirement that a family must be a first-time homeowner is not applicable.
- The requirement for pre-assistance counseling is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued homeownership assistance).

Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home. However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if they own any title or other interest in the prior home.

The PHA may deny permission to move to a new unit with continued voucher assistance:

- If the PHA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the PHA's policy regarding number of moves within a 12-month period.

The PHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and
- The family has moved, or will move, from the home within the period established or approved by HUD.

PHA Policy

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with PHA policies in Chapter 10.

The PHA will not require additional counseling of any families who move with continued assistance.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, the PHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

The PHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy, with the exception of failure to meet obligations under the Family Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.

Homeownership assistance for a family automatically terminates 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

PHA Policy

In order for the PHA to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following the PHA's last housing assistance payment on behalf of the family, the family must submit a written request to the PHA at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. The PHA will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will the PHA postpone termination beyond an additional 90 days.

The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

PHA Policy

The PHA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations listed in Section 1, as well as for any of the reasons listed in Section 2 of form HUD-52649, Statement of Homeowner Obligations Housing Choice Homeownership Voucher Program.

In making its decision to terminate homeownership assistance, the PHA 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 PHA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-II.F.

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 Elevated Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking; and maintaining the confidentiality of information obtained from victims.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

In addition, as specified in Notice PIH 2022-18, PHAs may use administrative fee funding for both administrative and “other expenses” needed to employ strategies and undertake activities beyond regular administrative responsibilities to facilitate the successful leasing and use of housing choice vouchers by families, such as through the use of security deposit assistance and landlord recruitment and incentive payments, among other allowable expenses specified in the notice. PHAs are also permitted to use UNP for these expenses [Notice PIH 2022-18].

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

PHA Policy

Expenditures from the UNP account will be made in accordance with all applicable federal requirements.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the 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).

PHA Policy

Copies of the payment standard and utility allowance schedules are available for review in the PHA'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 PHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the 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)].

PHA Policy

The PHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the PHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: The PHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The PHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the PHA will consider increasing the payment standard. In evaluating rent burdens, the PHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: The PHA may review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: The PHA 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 PHA 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 PHA 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.

Effective dates of changes to payment standard amounts will be determined at time of update. The PHA will always ensure the payment standards will be within the basic range.

Exception Payment Standards [24 CFR 982.503(c)(5), Notice PIH 2018-01, FR Notice 9/27/21]

A non-SAFMR PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to SAFMRs@hud.gov to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

In addition, HUD allows PHAs to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. PHAs may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD (See Section 19-III.E.).

Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]

PHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

PHA Policy

The PHA will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas.

Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

PHA 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 share would otherwise exceed 40 percent of adjusted monthly income;
and

The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

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.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

PHA Policy

The PHA has not included an allowance for air-conditioning in its schedule.

Reasonable Accommodation and Individual Relief

Upon request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

Further, the PHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief and to notify residents about the availability of individual relief, and also to notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company. Policies for granting exception utility allowances can be found in Section 6-III.D. of this plan.

Utility Allowance Revisions

The PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised [24 CFR 982.517(c)(1)].

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to approve an extension of a voucher term
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the NSPIRE standards
- A PHA determination that the unit does not meet space standards

PHA Policy

The PHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

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

PHA Policy

A request for an informal review must be made in writing and delivered to the PHA either in person, by fax, or by email, by the close of the business day, no later than 10 business days from the date of the PHA's denial of assistance.

The PHA must schedule and send written notice of the informal review within 10 business days of the family's request.

If the informal review will be conducted remotely, at the time the PHA notifies the family of the informal review, the family will be informed:

Regarding the processes to conduct a remote informal review;

That, if needed, the PHA will provide technical assistance prior to and during the informal review; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform the PHA and the PHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

Informal Review Procedures [24 CFR 982.554(b)]

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

Remote Informal Reviews [Notice PIH 2020-32]

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

PHA Policy

The PHA has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

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

Ensuring Accessibility for Persons with Disabilities and LEP Individuals

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

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

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

Conducting Remote Informal Reviews

The PHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

PHA Policy

The PHA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote review, the PHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the informal review and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person informal review.

If the informal review is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The PHA will scan and email copies of these documents to the PHA representative the same day.

Documents will be shared electronically whenever possible.

The PHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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.

PHA Policy

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The PHA 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 their representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension 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 NSPIRE standards
- A PHA determination that the unit is not in accordance with space standards because of family size
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

PHA Policy

The PHA will only offer participants the opportunity for an informal hearing when required to by the regulations, and if the PHA denies a request for a reasonable accommodation (see Chapter 2).

Remote Informal Hearings [Notice PIH 2020-32]

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

PHA Policy

The PHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

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

Ensuring Accessibility for Persons with Disabilities and LEP Individuals

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

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

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

Conducting Informal Hearings Remotely

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements, and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

PHA Policy

The PHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to scheduling the remote hearing, the PHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the PHA of any known barriers. The PHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The PHA will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

The PHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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.

PHA Policy

In cases where the PHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of the PHA.

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 PHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of the PHA's hearing procedures.

That the family may request a remote informal hearing.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

PHA Policy

A request for an informal hearing must be made in writing and delivered to the PHA either in person, by fax, by email, or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's decision or notice to terminate assistance.

The PHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

If the PHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

Regarding the processes involved in a remote informal hearing;

That the PHA will provide technical assistance prior to and during the informal hearing, if needed; and

That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the PHA and the PHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The PHA 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. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, the PHA's decision will stand.

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.

For the purpose of informal hearings, *documents* include records and regulations.

PHA Policy

The family will be allowed to copy any documents related to the hearing at a **cost of \$.25 per page** to the family. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

If the hearing will be conducted remotely, the PHA will compile a hearing packet, consisting of all documents the PHA intends to produce at the informal hearing. The PHA will mail copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of the PHA representative and retained by the PHA.

Documents will be shared electronically whenever possible.

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.

PHA Policy

For in-person hearings, the PHA will not require pre-hearing discovery by the PHA of family documents directly relevant to the hearing.

If the informal hearing is to be conducted remotely, the PHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The PHA will scan and email copies of these documents to the hearing officer and the PHA representative the same day.

Documents will be shared electronically whenever possible.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

PHA Policy

**The PHA has designated the following to serve as hearing officers:
Executive Director, HCV Program Director, Development Director, Finance
Director, Property Management Director, Commissioners, Operations Director, and
employees of other housing agencies with comparable titles. Attorneys, retired or
currently practicing, law students or other qualified persons can also be considered.**

Attendance at the Informal Hearing

PHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A PHA representative(s) and any witnesses for the PHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by the PHA 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)].

PHA 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.

PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either the PHA (or the family, if required in a remote hearing) fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Procedures for Rehearing or Further Hearing

PHA 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 PHA will take effect and another hearing will not be granted.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

PHA Notice to the Family: The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.

PHA Evidence to Support the PHA 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 PHA'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 PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA 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 the PHA representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

Order: The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.

Issuance of Decision [24 CFR 982.555(e)(6)]

A copy of the hearing must be furnished promptly to the family.

PHA Policy

The hearing officer will mail a "Notice of Hearing Decision" to the PHA and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Decision" will be maintained in the PHA's file.

Effect of Final Decision [24 CFR 982.555(f)]

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

PHA Policy

The Executive Director has the authority to determine that the PHA is not bound by the decision of the hearing officer because the PHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the PHA will mail a "Notice of Final Decision" to the PHA and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the PHA's file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

PHA Policy

The PHA 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 PHA 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.

PHA Policy

The PHA 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 within 30 days of receipt of the USCIS appeal decision.

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. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the 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.

PHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of 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 confront and cross-examine all witnesses on whose testimony or information the PHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. Upon request, the PHA will provide competent interpretation services, free of charge.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

PHA Policy

The PHA will not provide a transcript of an audio taped hearing.

Hearing Decision

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE PHA

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA, the PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement [24 CFR 982.552(c)(1)(vii)]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

PHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the PHA holds the owner or participant liable to return any overpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

16-IV.B. REPAYMENT POLICY

Owner Debts to the PHA

PHA Policy

Any amount due to the PHA by an owner must be repaid by the owner within 30 days of the PHA 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 PHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the PHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the PHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will ban the owner from future participation in the program and pursue other modes of collection.

When an owner refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

Family Debts to the PHA

Families are required to reimburse the PHA if they were charged less rent than required because the family either underreported or failed to report income. PHAs are required to determine retroactive rent amounts as far back as the PHA has documentation of family unreported income [Notice PIH 2018-18].

PHA Policy

Any amount owed to the PHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

Refusal to Enter into an Agreement

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA must terminate assistance [Notice PIH 2018-18].

PHA Policy

When a family refuses to repay monies owed to the PHA, in addition to termination of program assistance, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

General Repayment Agreement Guidelines for Families

Down Payment Requirement

PHA Policy

Before executing a repayment agreement with a family, the PHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the PHA that a down payment of 10 percent would impose an undue hardship, the PHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2018-18 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2018-18 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

PHA Policy

The PHA has established the following thresholds for repayment of debts:

Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts under \$1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the PHA that the threshold applicable to the family’s debt would impose an undue hardship, the PHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the PHA will consider all relevant information, including the following:

The amount owed by the family to the PHA

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control

The family’s current and potential income and expenses

The family’s current family share, as calculated under 24 CFR 982.515

The family’s history of meeting its financial responsibilities

Execution of the Agreement

All repayment agreements must be in writing, dated, and signed by both the family and the PHA [Notice PIH 2018-18].

PHA Policy

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable).

Due Dates

PHA Policy

All payments are due by the close of business on the 10th day of the month. If the 10th does not fall on a business day, the due date is the close of business on the first business day after the 10th.

Late or Missed Payments

PHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the PHA, the PHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the PHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the PHA will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

PHA Policy

The PHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

Repayment Agreement Terms

All repayment agreements must be in writing, dated, signed by both the family and the PHA, include the total retroactive rent amount owed, any amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 requires certain provisions, at a minimum, be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]

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].

16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

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 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 samples.
<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 at the required times.• 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.

Indicator 5: NSPIRE quality control inspections

Maximum Score: 5

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of NSPIRE inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA’s certification.

Indicator 6: NSPIRE enforcement

Maximum Score: 10

- This indicator shows whether, following each inspection of a unit under contract where the unit fails to meet NSPIRE standards, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all deficiencies in accordance with required time frames, according to the PHA’s certification.

Indicator 7: Expanding housing opportunities

Maximum Points: 5

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA’s jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA’s certification.

Indicator 8: FMR limit and payment standards

Maximum Points: 5 points

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA’s jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA’s certification.

Indicator 9: Annual reexaminations

Maximum Points: 10

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are less than two months overdue, according to data from PIC.

Indicator 10: Correct tenant rent calculations

Maximum Points: 5

- This indicator shows whether the PHA correctly calculates the family’s share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract inspections

Maximum Points: 5

- This indicator shows whether newly leased units pass 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 inspection on or before the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual inspections

Maximum Points: 10

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up

Maximum Points: 20 points

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA’s baseline voucher units in the ACC for the calendar year ending on or before the PHA’s fiscal year, or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances

Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

Success Rate of Voucher Holders**Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

Deconcentration Bonus Indicator**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 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

16-VI.A. 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.

16-VI.B. RECORD RETENTION [24 CFR 982.158; 24 CFR 908.101]

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

The PHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

PHA Policy

The PHA will keep for at least three years records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.

The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [see 24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

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

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement 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. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking see section 16-IX.E.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The PHA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

PHA Policy

Upon notification by the owner, the PHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner, the PHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

16-VII.C. 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 elevated blood lead level.

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

PHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the PHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. 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.

16-VIII.B. METHODOLOGY

PHA 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 and funding reserves, 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.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

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

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Stalking and Human Trafficking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking"; and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
 - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship

- The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
 - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
 - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
 - A person with whom the victim shares a child in common
 - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
 - Restrict a person's access to money, assets, credit, or financial information
 - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
 - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
 - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
 - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
 - Internet enabled devices
 - Online spaces and platforms
 - Computers
 - Mobile devices
 - Cameras and imaging programs
 - Apps
 - Location tracking devices
 - Communication technologies
 - Any other emergency technologies

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

PHA Policy

The PHA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

A copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the PHA's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

PHA Policy

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance, as part of the written briefing packet, and at the time the family is admitted to the program. The PHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The PHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The PHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

PHA Policy

Whenever the PHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PHA may decide not to send mail regarding VAWA protections to the victim's unit if the PHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the PHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers

While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

PHA Policy

The PHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, stalking, human trafficking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [FR Notice 11/16/16].

PHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The PHA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the PHA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by the PHA will be in writing.

Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

PHA Policy

If presented with conflicting certification documents from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

PHA Policy

If the PHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the PHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, stalking, and human trafficking, including the fact that an individual is a victim, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE
VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

Westbrook Housing

Notice of Occupancy Rights under the Violence Against Women Act¹

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.² The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

¹ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

² Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Removing the Abuser or Perpetrator from the Household

The PHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the PHA chooses to remove the abuser or perpetrator, the PHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the PHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the PHA must follow federal, state, and local eviction procedures. In order to divide a lease, the PHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, the PHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the PHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

2. You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

The PHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The PHA's emergency transfer plan provides further information on emergency transfers, and the PHA must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The PHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the PHA must be in writing, and the PHA must give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. The PHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the PHA as documentation. It is your choice which of the following to submit if the PHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by the PHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that they believe that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that the PHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the PHA does not have to provide you with the protections contained in this notice.

If the PHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the PHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the PHA does not have to provide you with the protections contained in this notice.

Confidentiality

The PHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

The PHA must not allow any individual administering assistance or other services on behalf of the PHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The PHA must not enter your information into any shared database or disclose your information to any other entity or individual. The PHA, however, may disclose the information provided if:

- You give written permission to the PHA to release the information on a time limited basis.
- The PHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires the PHA or your landlord to release the information.

VAWA does not limit the PHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the PHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the PHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the PHA can demonstrate the above, the PHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with:

Boston Regional Office of FHEO
U.S. Department of Housing and Urban Development
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 321
Boston, MA 02222-1092
(617) 994-8300 (800) 827-5005 TTY (800) 877-8339

For Additional Information

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, the PHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **the Housing Choice Voucher Department at (207) 854-9779 or info@westbrookhousing.org**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY).

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact: **Family Crisis Services (Cumberland County) at (207) 874-1973 or (800) 537-6066 or Caring Unlimited (York County) at (207) 490-3227 or (800) 239-7298.**

Attachment: Certification form HUD-5382

**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,
FORM HUD-5382**

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING
(HCV VERSION)**

Attachment: Certification form HUD-5382

Westbrook Housing

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual
Assault, or Stalking
Housing Choice Voucher Program**

Emergency Transfers

The PHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),³ the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.⁴ The ability of the PHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **public housing and housing choice voucher (HCV) programs** are in compliance with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

³Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

⁴Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify the PHA's management office and submit a written request for a transfer to **any PHA office**. The PHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The PHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the PHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the PHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Housing Choice Voucher (HCV) Program

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, the PHA will assist you to move to a safe unit quickly using your existing voucher assistance. The PHA will make exceptions to program regulations restricting moves as required.

At your request, the PHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by the PHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by the PHA
- LIHTC

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the PHA will refer you to organizations that may be able to further assist you.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383

**EMERGENCY TRANSFER
REQUEST FOR CERTAIN
VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: _____

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

EXHIBIT 16-5: MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

Westbrook Housing

NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault, stalking and human trafficking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through **Westbrook Housing's** HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (see 24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, stalking, or human trafficking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, stalking, or human trafficking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

a. Nothing in VAWA limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

- 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking; or
- 2) The distribution or possession of property among members of a household in a case.

b. Nothing in VAWA limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in VAWA limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking, or the effects of abuse:
2) Signed by the applicant or tenant; and
3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, stalking, or human trafficking under 24 CFR 5.2003; or
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, stalking, or human trafficking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA may be construed to limit the authority of the covered housing provider to:

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking at eviction or termination proceedings.

Owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWAs (See FR Notice 1/4/23.)

Moves

A victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse

VAWA generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, VAWA does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking that is in question against the tenant or an affiliated individual of the tenant. Nor does VAWA prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable federal, state, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

Westbrook Housing has extensive relationships with local service providers. **Westbrook Housing's** staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in **Westbrook Housing's** Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship;
 - (ii) The type of relationship; and
 - (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:

- The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
- A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
- A person with whom the victim shares a child in common
- A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

Attached:

Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
Westbrook Housing's VAWA Notice of Occupancy Rights

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to NSPIRE standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

PHA Policy

The PHA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.

See Exhibit 17-1 for information on projects to which the PHA has attached PBV assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap.

For units under a HAP contract that was first executed on or after April 18, 2017, units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
 - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

PBV units that house eligible youth receiving FUPY/FYI assistance are also covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. FYI TPVs that were awarded under Notice PIH 2019-20 are not part of this exception since PHAs are prohibited from project-basing FYI TPVs. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority [FR Notice 1/24/22]. See Chapter 19 for policies specific to project-basing FUPY vouchers.

PHA Policy

The PHA may project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

PHA Policy

The PHA will consider additional project-based units above the 20 percent program limit using the following criteria:

Exception categories only apply to PBV HAP contracts that were first executed on or after 4/18/17. HAP contracts executed before this date are not eligible for the additional 10 percent exception.

If the PHA wishes to add units under this exception, the PHA must submit information on the number of units and the exception categories to the HUD Field Office in accordance with section C.2.A of *Federal Register* Notice 1/18/17.

If the PHA sets aside units for veterans, the PHA may further define *veteran* for purposes of determining unit eligibility. For example, the PHA could require the veteran be eligible to receive supportive services from the Department of Veterans Affairs or that the veteran was not dishonorably discharged.

If the PHA sets aside units for supportive services for persons with disabilities or elderly persons, the PHA must include the types of services offered to families and the extent to which the services will be provided.

***Services* could include meal services adequate to meet nutritional need, housekeeping aid, personal assistance, transportation services, health-related services, educational and employment services, or other services designed to help the recipient live in the community as independently as possible.**

The services do not need to be provided by the owner or on-site, but must be reasonably available to families receiving the assistance.

The PHA may not require participation as a condition of living in an excepted unit.

The owner may not require the assisted family to pay charges for meals or supportive services, with the exception of at an assisted living facility where owners may charge for meals and services, although these charges may not be included in the rent to owner or the calculation of reasonable rent.

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

With certain exceptions, the PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The PHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21; 24 CFR 983.51(b)]

For certain public housing projects where the PHA has an ownership interest or control, the PHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with NSPIRE standards.

The PHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

PHA Policy

The PHA will not attach PBVs to projects owned by the PHA as described above.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

PHA Policy

PHA Request for Proposals for Rehabilitated and Newly Constructed Units

The PHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

American Journal

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the PHA will post the RFP and proposal submission and rating and ranking procedures on its website.

The PHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Proposals will be due in the PHA office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the PHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The PHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

In order to promote partially assisted projects, projects where less than 25 percent of the units will be assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the PHA will rate partially assisted projects on the percentage of units assisted. Projects with the lowest percentage of assisted units will receive the highest score.

PHA Requests for Proposals for Existing Housing Units

The PHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals:

American Journal

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the PHA will post the notice inviting such proposal submission and the rating and ranking procedures on its website.

The PHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Extent to which units are occupied by families that are eligible to participate in the PBV program.

PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The PHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

The PHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

American Journal

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition to, or in place of advertising, the PHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The PHA will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities; and

Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community.

PHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. This also applies to noncompetitive selections. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the initial rent to owner, the redetermined rent to owner, and reasonable rent. NSPIRE inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

PHA Policy

The PHA may submit a proposal for project-based housing that is owned or controlled by the PHA. The PHA may issue a conditional award but will obtain HUD approval prior to issuing a final award for the selected proposal for PHA-owned housing.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

PHA Policy

Within 10 business days of the PHA making the selection, the PHA will notify the selected owner in writing of the owner's selection for the PBV program. The PHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the PHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the PHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The PHA will also post the notice of owner selection on its electronic web site.

The PHA will make available to any interested party its rating and ranking sheets and documents that identify the PHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The PHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The PHA will make these documents available for review at the PHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

17-II.C. HOUSING TYPE [24 CFR 983.52]

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with NSPIRE standards. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

Subsidized Housing [24 CFR 983.54]

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

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

17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 3/13/23]

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 3/23/23 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21]

In general, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]

As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
 - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services.

Under the Fostering Stable Housing Opportunities (FSHO) amendments, units exclusively made available to youth receiving FUPY/FYI assistance may be excepted from the project cap for HAP contracts first effective after December 27, 2020. For more information on excepted units for FUPY, see Chapter 19.

Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) or FSHO (contract in effect on or prior to December 27, 2020) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

Supportive Services

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

PHA Policy

Excepted units will be limited to units for elderly families.

Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

PHA Policy

The PHA does not have any PBV units that are subject to the per project cap exception.

Promoting Partially Assisted Projects [24 CFR 983.56(c)]

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 units or 25 percent of units.

PHA Policy:

Excepted units will be limited to units for elderly families.

Beyond that, the PHA will not impose any further cap on the number of PBV units assisted per project.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and NSPIRE Site Standards [24 CFR 983.57(b)]

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the NSPIRE site and neighborhood standards at 24 CFR 5.703.

PHA Policy

It is the PHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the PHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the PHA will grant exceptions to the 20 percent standard where the PHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community;

- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

- A census tract where there has been an overall decline in the poverty rate within the past five years; or

- A census tract where there are meaningful opportunities for educational and economic advancement.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting NSPIRE inspections.

17-III.B. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE [24 CFR 983.101]

NSPIRE standards for the tenant-based program, including those for special housing types, generally apply to the PBV program. NSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date and must determine whether the units substantially comply with NSPIRE. To qualify as existing housing, units must substantially comply with NSPIRE on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with NSPIRE.

Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

PHA Policy

The PHA will not provide assistance on behalf of the family until the unit fully complies with NSPIRE.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract (or at least triennially for small rural PHAs), the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with NSPIRE. Turnover inspections are not counted toward meeting this inspection requirement. The PHA also has the option in certain mixed finance properties to rely on alternative inspections conducted at least triennially.

PHA Policy

The PHA will implement the use of alternative inspections as per CFR 24 982.406. Where possible, the PHA will use the triennial inspections performed for the purpose of Low-Income Housing Tax Credit compliance per CFR 983.103(g) in the Project-Based Housing Choice Voucher units, including RAD units, administered by Westbrook Housing.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

PHA Policy

The PHA will not rely on alternative inspection standards.

Other Inspections [24 CFR 983.103(e)]

The PHA must inspect contract units whenever needed to determine that the contract units comply with NSPIRE standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an NSPIRE deficiency and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family NSPIRE deficiencies.

In conducting PHA supervisory quality control inspections, the PHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(f)]

In the case of PHA-owned units, the inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The PHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with NSPIRE, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

Content of the Agreement [24 CFR 983.152(d)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above NSPIRE standards.

Execution of the Agreement [24 CFR 983.153]

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

PHA Policy

The PHA will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18 months after execution constitutes project development. Any development initiated on existing units within 18 months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with NSPIRE and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

PHA Policy

The PHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The PHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

PHA Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with NSPIRE standards and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the NSPIRE standards, unless the PHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection where no life-threatening conditions are present. For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

PHA Policy

For existing housing, the HAP contract will be executed within 10 business days of the PHA determining that all units pass inspection.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet NSPIRE standards, and the owner has submitted all required evidence of completion.

Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

PHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

PHA Policy

When determining whether or not to extend an expiring PBV contract, the PHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner's record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

Termination by PHA [24 CFR 983.205(c) and FR Notice 1/18/17]

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206, FR Notice 1/18/17, and Notice PIH 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

Remedies for NSPIRE Deficiencies [24 CFR 983.208(b)]

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with NSPIRE standards. If the PHA determines that a contract does not comply with NSPIRE standards, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

PHA Policy

The PHA will abate and terminate PBV HAP contracts for noncompliance with NSPIRE in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.207(a)]

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

PHA Policy

The PHA will add units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with NSPIRE standards;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The owner is required to maintain and operate the contract units and premises in accordance with NSPIRE standards, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with NSPIRE standards.

PHA Policy

The PHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The PHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

PHA Policy

The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, meet asset limitation requirements, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

PHA Policy

The PHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

In-Place Families [24 CFR 983.251(b)]

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an “in-place family.” These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA’s waiting list. Once the family’s continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

17-VLC. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and project-based assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

PHA Policy

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The PHA currently has waiting lists for the following PBV projects:

Larrabee Village

Larrabee Commons (Dr. Arthur O. Berry Apartments)

Larrabee Heights II (Robert L. Harnois Apartments)

Larrabee Heights III (Lewis H. Emery Apartments)

17-VLD. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely low-income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

The PHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with “excepted units” for elderly families or supportive services, the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

PHA Policy

The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner’s transfer policy.

The PHA will select applicants aged 62 or older for Larrabee Village.

The PHA will select applicants aged 55 or older for Larrabee Commons (Dr. Arthur O. Berry apartments).

The PHA will select applicants aged 62 or older for Larrabee Heights II (Robert L. Harnois Apartments). A total of 13 units have a preference provided to families who have special housing needs or are homeless, with a preference for 6 of the 13 given to families who live or work in Westbrook.

The PHA will select applicants aged 55 or older for Larrabee Heights III (Lewis H. Emery Apartments).

17-VLE. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VLF. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

PHA Policy

The owner must notify the PHA in writing (mail, fax, or email) within five business days of learning about any vacancy or expected vacancy.

The PHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

PHA Policy

If any contract units have been vacant for 120 days, the PHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The PHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the PHA's notice.

17-VL.G. TENANT SCREENING [24 CFR 983.255]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

PHA Policy

The PHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

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

PHA Policy

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

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

PHA Policy

The PHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f)]

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

PHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259]

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

PHA Policy

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project;

PBV assistance in another project; and

Tenant-based voucher assistance.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

PHA Policy

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the PHA's public housing program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]

As of April 17, 2018, the PHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

PHA Policy

The PHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, the PHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a ten percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS [24 CFR 983.301]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c)]

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Definitions

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

PHA Policy

The PHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the PHA will use the higher initial rent to owner amount.

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

PHA Policy

Upon written request by the owner, the PHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The PHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the PHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the PHA determines it is necessary due to PHA budgetary constraints.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective date of PHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

PHA Policy

The PHA will not apply SAFMRs to the PHA's PBV program.

Redetermination of Rent [24 CFR 983.302]

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

PHA Policy

An owner's request for a rent increase must be submitted to the PHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The PHA may not approve, and the owner may not receive any increase of rent to owner, until and unless the owner has complied with requirements of the HAP contract, including compliance with NSPIRE. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

Notice of Rent Change

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

PHA Policy

The PHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

PHA-Owned Units [24 CFR 983.301(g)]

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

When Rent Reasonable Determinations Are Required

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

PHA-Owned Units

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with NSPIRE standards and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

PHA Policy

If the PHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the PHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

PHA Policy

The PHA will either make utility reimbursements to the family or directly to Central Maine Power (CMP).

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Larrabee Village

Address: 30 Liza Harmon Drive, Westbrook, ME 04092

Owner Information: Westbrook Senior Services LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed Finance Development: Yes; LIHTC

HAP CONTRACT

Effective Date of Contract: January 1, 2018

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 15 years

Expiration Date of Contract: December 31, 2032

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units		150					
Initial Contract Rent	\$	\$949	\$	\$	\$	\$	

Structure Type: Low Rise

Housing Type: Single Room Occupancy

UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Gas	Owner	Owner
Cooking	Electric	Owner	Owner
Water Heating	Gas	Owner	Owner
Other Electric		Owner	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Tenant
Refrigerator			
Range/Microwave			
Other (specify)			

Accessible Units and Features: All units are accessible and have large bathrooms with walk-in showers.

Target Population: 62+

Excepted Units:

- **Supportive Services:** No
- **Elderly Units:** Yes, 150 units
- **Disabled Units:** N/A
- **FUPY/FYI Units:** No
- **Are units excepted because they are located in a low-poverty census tract area?:** No

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will select applicants aged 62 or older for Larrabee Village.

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Vacancy Payments: The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Larrabee Commons

Address: 27 Liza Harmon Drive, Westbrook, ME 04092

Owner Information: Larrabee Commons LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed Finance Development: Yes; LIHTC and HOME

HAP CONTRACT

Effective Date of Contract: December 1, 2018

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 15 years (8 units) & 5 years (10 units)

Expiration Date of Contract: November 30, 2033 & November 1, 2023

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units		18					
Initial Contract Rent	\$	\$845 \$1014 \$1054	\$	\$	\$	\$	

Structure Type: Low Rise

Housing Type: Single Room Occupancy

UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Gas	Owner	Owner
Cooking	Electric	Owner	Owner
Water Heating	Gas	Owner	Owner
Other Electric		Owner	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Tenant
Refrigerator			
Range/Microwave			
Other (specify)			

Accessible Units and Features: 17 accessible units

Target Population: 55+

Excepted Units:

- **Supportive Services:** No
- **Elderly Units:** Yes, 8 units
- **Disabled Units:** N/A
- **FUPY/FYI Units:** No
- **Are units excepted because they are located in a low-poverty census tract area?:** No

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will select applicants aged 55 or older for Larrabee Commons (Dr. Arthur O. Berry apartments).

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Vacancy Payments: The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Robert L. Harnois Apartments

Address: 70 Ruth Hunton Court, Westbrook, ME 04092

Owner Information: Larrabee Heights II LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed Finance Development: Yes; LIHTC, HOME, HTF

HAP CONTRACT

Effective Date of Contract: December 1, 2020

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 20 years

Expiration Date of Contract: November 30, 2040

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units		61					
Initial Contract Rent	\$	\$1167	\$	\$	\$	\$	

Structure Type: Low Rise

Housing Type: Single Room Occupancy

UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Gas	Owner	Owner
Cooking	Electric	Owner	Owner
Water Heating	Gas	Owner	Owner
Other Electric		Owner	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Tenant
Refrigerator			
Range/Microwave			
Other (specify)			

Accessible Units and Features: 19 accessible units

Target Population: 62+

Excepted Units:

- **Supportive Services:** No
- **Elderly Units:** Yes, 61 units
- **Disabled Units** N/A
- **FUPY/FYI Units:** No
- **Are units excepted because they are located in a low-poverty census tract area?:** No

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will select applicants aged 62 or older for Larrabee Heights II (Robert L. Harnois Apartments). A total of 13 units have a preference provided to families who have special housing needs or are homeless, with a preference for 6 of the 13 given to families who live or work in Westbrook.

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Vacancy Payments: The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Lewis H. Emery Apartments

Address: 67 Ruth Hunton Court, Westbrook, Maine 04092

Owner Information: Larrabee Heights III LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed Finance Development: Yes; LIHTC

HAP CONTRACT

Effective Date of Contract: October 15, 2021

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 15 years

Expiration Date of Contract: October 14, 2036

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units		20					
Initial Contract Rent	\$	\$1229	\$	\$	\$	\$	

Structure Type: Low Rise

Housing Type: Single Room Occupancy

UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Gas	Owner	Owner
Cooking	Electric	Owner	Owner
Water Heating	Gas	Owner	Owner
Other Electric		Owner	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Tenant
Refrigerator			
Range/Microwave			
Other (specify)			

Accessible Units and Features: 6 accessible units

Target Population: 55+

Excepted Units:

- **Supportive Services:** No
- **Elderly Units:** No
- **Disabled Units:** N/A
- **FUPY/FYI Units:** No
- **Are units excepted because they are located in a low-poverty census tract area?:** No

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will select applicants aged 55 or older for Larrabee Heights III (Lewis H. Emery Apartments).

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Vacancy Payments: The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units

[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family’s unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

RAD Requirements Applicable to Non-RAD units in the Project

Alternative Requirement under RAD as Listed in Notice PIH 2019-23	Standard PBV Policy That Does Not Apply	Applicable Policy in Chapter 18
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements.	18-II.F. SITE SELECTION STANDARDS

1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VII.C. UTILITY ALLOWANCES
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. Phase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. PHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18.	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents. New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in administrative plan.	No corresponding policy.
1.6.C.9. When Total Tenant	Alternative requirements	18-VI.B. LEASE, Continuation

Payment Exceeds Gross Rent	under RAD for in-place residents. New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	of Housing Assistance Payments
1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents. New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list. Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST	18-V.D. ORGANIZATION OF THE WAITING LIST
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

Chapter 18

PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to NSPIRE standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

18-I.B. APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice PIH 2019-23 (issued September 5, 2019). Any non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 and in this policy.

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the “RAD Statute.”

Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. For all conversion types, HUD reserves the right, in its sole discretion and upon request from the applicant, to apply provisions from previous versions of this notice to program participants that are near conversion.
 - Notice PIH 2023-19 amends Notice PIH 2019-23 and Notice PIH 2021-07, and was effective immediately.
 - Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.
 - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
 - Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.
 - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.

- Notice PIH 2012-32, REV-2 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.
 - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (6/20)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
 - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
 - This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.

NOTE: The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D.

- RAD FAQs (<http://www.radresource.net/search.cfm>)

PHA Policy

<u>Project</u>	<u>Closing Date</u>	<u>RAD Notice</u>
<u>Larrabee Woods</u>	<u>April 4, 2019</u>	<u>PIH 2012-32, REV 3</u>
<u>Riverview Terrace</u>	<u>April 5, 2019</u>	<u>PIH 2012-32, REV 3</u>

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to RAD PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

See Exhibit 18-1 for information on projects to which the PHA has attached RAD PBV assistance.

18-I.D. RELOCATION REQUIREMENTS

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
 - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
 - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
 - Income limit eligibility requirements associated with the LIHTC program or another program; and
 - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.
- Alternative housing options may involve a variety of housing options, including but not limited to:
 - Transfers to public housing
 - Admission to other affordable housing properties subject to the applicable program rules
 - Housing choice voucher (HCV) assistance
 - Homeownership programs subject to the applicable program rules
 - Other options identified by the PHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; Notice PIH 2016-17]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION

18-II.A. OVERVIEW

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL [Notice PIH 2019-23]

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a “single-purpose entity” that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA’s related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].
- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the PHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or nonprofit entity, or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

- Control may be established through the terms of the project owner’s governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.
- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:
 - The PHA, or an affiliate under its sole control, is the general partner or managing member;
 - The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
 - The PHA retains control over leasing the property and determining program eligibility;
 - The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;
 - Other means that HUD finds acceptable

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:
 - A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
 - A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.

18-II.C. PHA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of *ownership or control* provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of *PHA-owned* under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of *ownership or control* but may not be considered PHA-owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

PHA Policy

None of the units converted to PBV under RAD are PHA-owned housing.

18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]

For projects governed by Notice PIH 2019-23, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing, or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing.
- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:
 - Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or
 - Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved “sources and uses” attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH 2019-23 and Notice PIH 2023-19]

PBV Percentage Limitation

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. The number of PBV units excluded from the PHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a covered project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a PHA. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

Unit Cap Limitation

When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 **only**, the following language applies:

- In general, the PHA may not provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as "excepted units" and do not count toward the project cap.
- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

PHA Policy

For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

18-II.F. SITE SELECTION STANDARDS [Notice PIH 2019-23; Notice PIH 2016-17]

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

To facilitate the uniform treatment of residents and units, any non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW [Notice PIH 2019-23; *Environmental Review Requirements for RAD Conversions*, March 2019]

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

PART III: DWELLING UNITS

18-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for NSPIRE inspections.

18-III.B. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE) [24 CFR 983.101 and 24 CFR 5.703]

NSPIRE standards for the tenant-based program generally apply to the PBV program. NSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

Lead-based Paint [24 CFR 983.101(c); Notice PIH 2019-23]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [Notice PIH 2016-17]

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

18-III.D. INSPECTING UNITS

Initial Inspection [RAD Quick Reference Guide, Notice PIH 2019-23, and Notice PIH 2023-19]

Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with NSPIRE standards. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet NSPIRE standards by the date indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the PHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units to be added to the HAP contract instead of conducting an initial inspection. During the period of the work, NSPIRE requirements apply. The PHA must enforce the project owner's obligations and conduct inspections when needed, (for example in response to tenant complaints or other information coming to its attention), and the owner must correct any deficiencies in accordance with NSPIRE requirements (i.e., no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any PHA-approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months (or once every 36 months for small rural PHAs) during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with NSPIRE. Turnover inspections are not counted toward meeting this inspection requirement.

PHA Policy

The PHA will implement the use of alternative inspections as per CFR 24 982.406.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

PHA Policy

The PHA will implement the use of alternative inspections as per CFR 24 982.406. Where possible, the PHA will use the triennial inspections performed for the purpose of Low-Income Housing Tax Credit compliance per CFR 983.103(g) in the Project-Based Housing Choice Voucher units, including RAD units, administered by Westbrook Housing.

Other Inspections [24 CFR 983.103(e)]

The PHA must inspect contract units whenever needed to determine that the contract units comply with NSPIRE and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an NSPIRE deficiency and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of NSPIRE standards.

In conducting PHA supervisory quality control inspections, the PHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(f); Notice PIH 2017-21]

In the case of PHA-owned units, all required inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

18-IV.A. OVERVIEW [*RAD PBV Quick Reference Guide 6/20*]

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

18-IV.B. HAP CONTRACT REQUIREMENTS

Contract Information [*RAD PBV Quick Reference Guide 6/20; Notice PIH 2019-23*]

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

Execution and Effective date of the HAP Contract [*RADBlast! 7/11/16*]

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

Term of HAP Contract [*Notice PIH 2019-23*]

The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2019-23]

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

Mandatory Contract Renewal [Notice PIH 2019-23]

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

Remedies for NSPIRE Deficiencies [24 CFR 983.208(b)]

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with NSPIRE. If the PHA determines that a contract unit does not comply with NSPIRE standards, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

PHA Policy

The PHA will abate and terminate PBV HAP contracts for noncompliance with NSPIRE in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

Floating Units [Notice PIH 2019-23]

Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

PHA Policy

The PHA will float assistance among unoccupied units within the project. Tracking of the number and type of units at the property, as well as identification of comparable units when assistance is floated, will be maintained by each property.

Reduction in HAP Contract Units [Notice PIH 2019-23]

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract, they certify that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with NSPIRE standards;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge, the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (this does not apply to the family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(b)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

PHA Policy

The PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS

18-V.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2019-23]

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)], and meet asset limitation requirements. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

PHA Policy

The PHA will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

**18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c);
Notice PIH 2019-23]**

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any non-RAD PBV units located in the same project are also subject to these requirements.

PHA Policy

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. The PHA currently has waiting lists for the following RAD PBV projects:

Larrabee Woods

Riverview Terrace

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the PHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

The PHA will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). The PHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

The PHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2019-23]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2019-23]

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

PHA Policy

The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will provide a preference for homeless individuals who are aged 55 or older and live or work in Westbrook for at least 17 units.

The PHA will select applicants aged 62 or older and/or disabled for the units.

18-V.F. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

18-V.G. OWNER SELECTION OF TENANTS [24 CFR 983.253]

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

PHA Policy

The owner must notify the PHA in writing (mail, fax, or email) within five business days of learning about any vacancy or expected vacancy.

The PHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

18-V.H. TENANT SCREENING [24 CFR 983.255]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

PHA Policy

The PHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

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

PHA Policy

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

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy

PART VI: OCCUPANCY

18-VI.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

18-VI.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter into a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner;
- The amount of any charges for food, furniture, or supportive services; and
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease. The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f); *RAD PBV Quick Reference Guide 6/20*]

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2019-23]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner’s lease as well as the PHA’s administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

These provisions apply to non-RAD PBV units located in the project as well.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2019-23; Notice PIH 2023-19; RAD PBV Quick Reference Guide 6/20]

Pre-Conversion Residents

The unit for a family with a TTP that equals or exceeds the gross rent (which is defined as the contract rent plus any utility allowance for the unit) must be placed on the PBV HAP contract and the family must be admitted to the PBV program. In this case, and until such time as the family's TTP falls below the gross rent, the family will pay the owner the alternate rent which is defined as the lesser of:

- The family's TTP minus the utility allowance (subject to any required phase-in); or
- The Zero HAP Rent Cap, which is the lower of:
 - 110 percent of the applicable FMR minus the utility allowance; or
 - In the event the units are subject to more restrictive rent setting requirement under the LIHTC or HOME programs (or other programs approved by HUD on a project-specific basis, the rent to owner set to comply with such requirements.

The family will continue to pay this amount until/if circumstances change, and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance in which case normal PBV rent requirements will apply to the family. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the NSPIRE standards, apply as long as the unit is under HAP contract or added back to the HAP Contract. Any non-RAD PBV units located in the same project are also subject to these requirements.

After a family has paid the Zero HAP Rent Cap for a period of 180 days, the PHA must remove the unit from the HAP Contract and the family's participating in the PBV program ends. If the Covered Project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit back onto the HAP contract and admit an eligible family. If the Covered Project is partially assisted and the family subsequently leaves the property, the unit must be reinstated back onto the HAP contract unless the PHA previously substituted a different unit on the HAP contract in accordance with 24 CFR § 983.207 or, where "floating units" have been permitted.

Additionally, if the family continues to reside in the project after the family's unit was removed from the HAP contract, the family may request to return to the PBV program if the family's income subsequently decreases to the extent that the family's TTP is less than the Zero-HAP Rent Cap, and the family is otherwise eligible for PBV assistance. The PHA must, at the earliest opportunity, reinstate the family's unit back onto the HAP contract to provide rental assistance to the family. If the project was partially assisted and the PHA previously substituted a different unit on the HAP contract, the PHA must substitute the family's unit for a vacant unit on the HAP contract if there is a vacant unit at the time of the request, or by doing so as soon as a unit on the HAP contract becomes vacant if there are no vacant units on the HAP contract at the time of the family request

New Admission Families

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new admission referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. This means a family's TTP may not equal or exceed the gross rent for the unit at admission. The PHA may request a waiver from HUD in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days.

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180-day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted and the family subsequently leaves the property, the PHA must reinstate the unit after the family has vacated the property and admit an eligible family. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207 or where floating units have been permitted.

Per the RAD Use Agreement, the owner may charge the family a rent that does not exceed 30 percent of 80 percent of the area median income. If a unit is removed from the RAD PBV HAP contract, then the lease terminates automatically, as stated in the tenancy addendum, as though the RAD PBV HAP contract had been terminated. The tenant must be offered a new lease, which must reflect the new tenant rent. A tenant in this circumstance is no longer a program participant and therefore no longer benefits from any of the rights or protections specific to RAD, or to the PBV program. Should the family subsequently lose employment, the owner may choose to reduce the family's rent, but if the family wishes to be admitted to the HCV/PBV program, then it must be admitted through the waiting list like any other applicant.

In circumstances where low RAD PBV rents may prohibit a significant number of otherwise eligible families on the waiting list from being admitted to the project because they do not require subsidy, and which could consequently create an undue concentration of poverty at the project compared to non-RAD PBV projects, a PHA may request a waiver from HUD for the covered project. The waiver will apply the alternative requirements applicable to the pre-conversion residents to new admission families.

PHA Policy

The PHA will not request waivers from HUD to apply the alternative requirements applicable to pre-conversion residents to new admission families.

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259; *RAD PBV Quick Reference Guide 6/20*]

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. If a tenant residing in a converting project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

PHA Policy

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2019-23]

Current PH FSS participants will continue to participate in the PHA's FSS program, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA) to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding.

Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS–SC grants.

At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a nonprofit or local resident association and this consequence of a RAD conversion may impact those entities.

Any non-RAD PBV units located in the same project are also subject to these requirements.

18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2019-23]

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

18-VI.E. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2019-23]

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project

PBV assistance in another project

Tenant-based voucher assistance

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the PHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA.

Choice Mobility [Notice PIH 2019-23; PRRAC Choice Mobility Implementation Guidance, 8/20]

Family's Right to Choice Mobility

Under RAD PBV, the choice mobility option provides families with the opportunity to move with continued assistance any time after 12 months of occupancy. All residents in converted properties should be aware of their housing mobility rights and of their options in a range of neighborhoods.

PHA Policy

To ensure that residents are fully aware of and understand their rights under choice mobility, the PHA will inform families of their rights under the choice mobility option and the benefits to moving to lower poverty areas, and provide a summary of the steps necessary to exercise this option, at the time the family signs the lease for the RAD PBV unit and during their annual recertification.

Information on choice mobility will be made be accessible to persons with disabilities, ensuring any information, electronic or otherwise, is accessible for persons with vision, hearing, and other disabilities. This information will also be made available in accordance with Limited English Proficiency (LEP) requirements, including document translation and user of interpretation services. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements.

Moving with Continued Assistance under Choice Mobility

If the family wishes to move with continued tenant-based assistance under choice mobility, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

Families are eligible to move with continued assistance under choice mobility after 12 months of occupancy. If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

PHA Policy

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to the PHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

The PHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list will also identify whether families live in standard or RAD PBV units.

The PHA will not subject RAD PBV families applying for choice mobility vouchers to any additional rescreening requirements in order to receive a tenant-based voucher.

Families exercising choice mobility will not be required to vacate their units before a lease has been entered into using their tenant-based voucher. At the time the PHA issues a choice mobility voucher, the PHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher.

Turnover Cap

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

PHA Policy

As a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD. Therefore, the PHA will establish a choice mobility cap. The PHA will not provide more than three-quarters of its turnover vouchers in a single year to residents of covered projects.

Families who requested a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

PHA Policy

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the PHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the PHA's public housing program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

18-VI.F. REEXAMINATIONS [RAD PBV Quick Reference Guide 6/20]

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

18-VI.G. EARNED INCOME DISALLOWANCE [Notice PIH 2019-23]

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Any non-RAD PBV units located in the same project are also subject to these requirements.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2019-23]

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter), the termination procedure for RAD conversions to PBV requires that PHAs provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction.
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

18-VI.I. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2019-23]

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(v) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual’s lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident’s rights, obligations, welfare, or status.

- For any hearing required under 24 CFR 982.555(a)(1)(i)–(v), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

The owner must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(v). (See Chapter 16)

The owner must provide an opportunity for an informal hearing before an eviction.

PART VII: DETERMINING CONTRACT RENT

18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2019-23]

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2019-23. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD.

Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications made to the initial contract rent, the initial rents are set at the lower of:

- An amount determined by the PHA, not to exceed 110 percent of the fair market rent (FMR) or the PHA's exception payment standard approved by HUD, or the alternate rent cap in a PHA's MTW agreement minus any utility allowance
- The reasonable rent
- The rent requested by the owner

18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2019-23; *RAD PBV Quick Reference Guide 6/20*; PHA Asset Repositioning “How to Apply OCAF for RAD PBV” Webinar]

RAD PBV contract rents are adjusted differently than contract rents in the standard PBV program. At each annual anniversary of the HAP contract, contract rents will be adjusted only by HUD’s operating cost adjustment factor (OCAF) that is applied to the current contract rent, less the portion of the rent paid for debt service, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent (as determined by the PHA that administers the contract or the independent entity, as applicable), with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the *Federal Register*; or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments at each contract anniversary date in accordance with the prevailing OCAF. The PHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years’ OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAFs have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps.

PHA Policy

The owner will request a contract rent adjustment from the PHA who administers the contract within 120 days, but no less than 60 days, prior to the HAP contract anniversary date by submitting a completed OCAF rent adjustment worksheet (Form HUD-9624). The independent entity will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent will only be increased up to the reasonable rent. The independent entity will notify the PHA who administers the contract in writing of the results of its review of the rent adjustment request. The PHA who administers the contract will retain a copy of the worksheet and any other records necessary to demonstrate how the OCAF was used to make rent adjustments for audit purposes. The approved rent adjustment will go into effect via written notice from the PHA that administers the project to the owner. This notice will constitute an amendment to the rents specified on Exhibit A of the RAD PBV HAP contract. The new rents to owner will take effect on the date of the contract anniversary.

Rent Decrease

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

18-VII.C. UTILITY ALLOWANCES [Notice PIH 2019-23; *RAD PBV Quick Reference Guide 6/20*]

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, the PHA that administers the contract must maintain the utility allowance schedule. The PHA may either maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517, respectively, or the PHA may instead apply site-specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to non-RAD PBV units in the project and is calculated consistent with Notice H 2015-04.

Each family transitions to the new utility allowance at their first recertification following conversion.

PHA Policy

The PHA will use the HCV utility allowance schedule for the RAD PBV developments.

18-VII.D. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

PHA-Owned Units

For PHA-owned units, the amount of the reasonable rent must be determined by an independent entity approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

PART VIII: PAYMENTS TO OWNER

18-VIII.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with NSPIRE and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

PHA Policy

If the PHA determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, the PHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 18-V.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353; Notice PIH 2019-23]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

Initial Certifications [Notice PIH 2019-23]

For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any non-RAD PBV units located in the same project are subject to the same requirements.

Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

PHA Policy

The PHA will either make utility reimbursements to the family or directly to Central Maine Power (CMP).

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2019-23; PHA Asset Repositioning “Phase-in of Tenant Rents” Webinar]

For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) would increase by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of *total tenant payment (TTP)*) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents. Any non-RAD PBV units located in the same covered project are subject to the terms of the phase-in provisions.

PHA Policy

The PHA will use the family’s public housing tenant rent (reflected on line 10f of the family’s most recent 50058) at the date of conversion to calculate the family’s tenant rent in PBV. The PHA will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or \$25 purely as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)

Year 2: Year 2 annual recertification and any interim recertification: 50 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP

Year 3: Year 3 annual recertification and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends, and tenants will pay full TTP from that point forward.

If the family’s income falls during the phase-in period such that the currently calculated PBV TTP falls below the amount that would otherwise be the phased-in rent, the family pays the currently calculated PBV TTP and the phase-in ends.

The PHA will communicate the PHA’s phase-in policy in writing to the family at the time the PHA first determines that the family qualifies for a rent phase-in.

Any non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Larrabee Woods

Address: 9 Dottie’s Way, Westbrook, ME 04092

Owner Information: Riverview Terrace LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed-Finance Development: Yes; LIHTC and HOME

HAP CONTRACT

Closing Date: April 4, 2019

List Which RAD Notice Applies to the Project: PIH 2012-32, REV-3

Effective Date of Contract: February 1, 2018

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 20 years

Expiration Date of Contract: January 31, 2038

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units		21	4				
Initial Contract Rent	\$	\$590	\$729	\$	\$	\$	

Unit Designation: Fixed

Accessible Units and Features: 6 accessible units

Target Population: 62+

Excepted Units (Notice PIH 2012-32, REV-2 Developments Only):

Supportive Services: No

Elderly Units: 25

Disabled Units: 25

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will provide a preference for homeless individuals who are aged 55 or older and live or work in Westbrook for at least 17 units.

The PHA will select applicants, age 62 or older and/or disabled for the units.

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Utilities: Electricity, electric heat, and electric hot water paid by tenants

Vacancy Payments: The PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION

DEVELOPMENT INFORMATION

Development Name: Riverview Terrace

Address: 21 Knight Street, Westbrook, ME 04092

Owner Information: Riverview Terrace LP, 30 Liza Harmon Drive, Westbrook, ME 04092

Property Management Company: Westbrook Housing Property Management

PHA-Owned: No

Mixed-Finance Development: Yes; LIHTC and HOME

HAP CONTRACT

Closing Date: April 5, 2019

List Which RAD Notice Applies to the Project: PIH 2012-32, REV-3

Effective Date of Contract: February 1, 2018

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 20 years

Expiration Date of Contract: January 31, 2038

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units	26	32					
Initial Contract Rent	\$496	\$590		\$	\$	\$	

Unit Designation: Fixed

Accessible Units and Features: 10 accessible units

Target Population: 62+ and/or disabled

Excepted Units (Notice PIH 2012-32, REV-2 Developments Only):

Supportive Services: No

Elderly Units: Yes, 58 units

Disabled Units: Yes, 58 units

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list

Preferences: The PHA will use the following local preferences, as well as date and time of the application, to establish placement position on the waiting list:

The PHA will provide a selection preference for existing residents within the development or from another development who meet the owner's transfer policy.

The PHA will provide a preference for homeless individuals who are aged 55 or older and live or work in Westbrook for at least 17 units.

The PHA will select applicants, age 62 or older and/or disabled for the units.

Preference Verification: Same as HCV; see Chapter 7

For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5

Utilities: Electricity, electric heat, and electric hot water paid by tenants

Vacancy Payments: The PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments. See Part 1, e, 2 of the HAP contract.

Chapter 19

SPECIAL PURPOSE VOUCHERS

INTRODUCTION

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. Special purpose vouchers include vouchers for the following programs:

- Family Unification Program (FUP)
- Foster Youth to Independence (FYI) program
- Veterans Affairs Supportive Housing (VASH)
- Mainstream
- Non-Elderly Disabled (NED)
- Stability Voucher program

PHA Policy

The PHA will administer the following types of special purpose vouchers:

Veterans Affairs Supportive Housing (VASH)

Mainstream

Non-Elderly Disabled (NED)

This chapter describes HUD regulations and PHA policies for administering special purpose vouchers. The policies outlined in this chapter are organized into five sections, as follows:

Part I: Family Unification Program (FUP)

Part II: Foster Youth to Independence (FYI) program

Part III: Veterans Affairs Supportive Housing (VASH)

Part IV: Mainstream voucher program

Part V: Non-Elderly Disabled (NED) vouchers

Part VI: Stability Voucher program

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to special purpose vouchers.

PART I: FAMILY UNIFICATION PROGRAM (FUP)

19-I.A. PROGRAM OVERVIEW [Fact Sheet, Housing Choice Voucher Program Family Unification Program (FUP)]

Overview

The Family Unification Program (FUP) was authorized by Congress in 1990 to help preserve and reunify families. PHAs that administer the program provide vouchers to two different populations—FUP families and FUP youth.

Families eligible for FUP are families for whom the lack of adequate housing is a primary factor in:

- The imminent placement of the family’s child or children in out-of-home care; or
- The delay in the discharge of the child or children to the family from out-of-home care.

There is no time limitation on FUP family vouchers, and the family retains their voucher as long as they are HCV-eligible. There is no requirement for the provision of supportive services for FUP family vouchers.

Youth eligible for FUP are those who:

- Are at least 18 years old and not more than 24 years of age;
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act at age 16 and older; and
- Are homeless or at risk of becoming homeless.

FUP youth vouchers are limited by statute to a period between 36 and 60 months of housing assistance. Supportive services must also be provided to FUP-eligible youth by the Public Child Welfare Agency (PCWA) or by another agency or organization under contract with the PCWA for the period of time defined in the notice or Notice of Funding Availability/Opportunity (NOFA/O) for which funding was made available.

PHAs that wish to administer FUP vouchers must apply to HUD by submitting an application under an active Notice of Funding Opportunity (NOFO). While the FUP program is administered in accordance with HCV regulations, the FUP NOFOs issued by HUD provide specific program information and requirements.

In order to administer the program, the PHA must also form a partnership with a local PCWA who is responsible for determining the family or youth meets FUP eligibility requirements and referring them to the PHA. Once the referral is received, the PHA is responsible for placing the FUP family or youth on the PHA’s waiting list and determining whether they are eligible to receive assistance under the PHA’s HCV program.

Assigning Vouchers [FUP FAQs]

The PHA may, but is not required to, assign a specific number or percentage of FUP vouchers for FUP youths and FUP families. Unless the PHA assigns a specific number or percentage of FUP vouchers to a designated FUP population, the PHA must serve any referrals (youths or families) that meet all program eligibility requirements up to the PHA's designated FUP program size.

PHA Policy

The PHA has not designated any specific number or percentage of FUP vouchers for youths or families. The PHA will serve all referrals that meet program eligibility requirements, up to the PHA's FUP voucher allocation.

19-I.B. PUBLIC CHILD WELFARE AGENCY (PCWA)

Families and youth do not apply directly to the PHA for FUP vouchers. They are instead referred by a PCWA with whom the PHA has entered into a Memorandum of Understanding (MOU). The partnering PCWA initially determines whether the family or youth meets the FUP program eligibility requirements listed in 19-I.C. and 19-I.D. and then refers those families or youths to the PHA.

HUD strongly encourages PHAs and PCWAs to make decisions collaboratively on the administration of the program and to maintain open and continuous communication. The PCWA must have a system for identifying FUP-eligible youth within the agency's caseload and for reviewing referrals from a Continuum of Care (COC) if applicable.

PHA Policy

The PHA has entered into an MOU with the following partnering organizations *[insert names of public child welfare agency (PCWA), continuum of care, and any other partnering organizations]*.

Supportive Services

The PCWA must provide supportive services for the period of time defined in the notice or NOFA/O for which the funding was made available to all FUP-eligible youth regardless of their age. The MOU between the PHA and the PCWA should identify the period of time in which supportive services will be provided.

PHA Policy

The PCWA will provide supportive services for all FUP youth for a period of 36 months. Supportive services may be provided to FUP-eligible youth by the PCWA or by another agency or organization under agreement or contract with the PCWA, including the PHA. The organization providing the services and resources must be identified in the MOU. The following services must be offered:

- Basic life skills information or counseling on money management, use of credit, housekeeping, proper nutrition or meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance or referrals for assistance on security deposits, utility hook-up fees, and utility deposits;
- Providing such assurances to owners of rental property as are reasonable and necessary to assist a FUP-eligible youth to rent a unit with a FUP voucher;
- Job preparation and attainment counseling (where to look and how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED), or attendance or financing of education at a technical school, trade school, or college, including successful work ethic and attitude models.

PHA Policy

Additional supportive services will not be offered.

A FUP-eligible youth cannot be required to participate in these services as condition of receipt of the FUP voucher.

19-I.C. FUP FAMILY VOUCHER ELIGIBILITY CRITERIA

FUP family assistance is reserved for eligible families that the PCWA has certified are a family for whom a lack of adequate housing is a primary factor in:

- The imminent placement of the family's child or children in out-of-home care, or
- The delay in the discharge of the child or children to the family from out-of-home care.

Lack of adequate housing means the family meets any one of the following conditions:

- Living in substandard housing, which refers to a unit that meets any one of the following conditions:
 - Does not have operable indoor plumbing
 - Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth
 - Does not have a usable bathtub or shower inside the unit for the exclusive use of a family or youth
 - Does not have electricity, or has inadequate or unsafe electrical service
 - Does not have a safe or adequate source of heat
 - Should, but does not, have a kitchen
 - Has been declared unfit for habitation by an agency or unit of government, or in its present condition otherwise endangers the health, safety, or well-being of the family or youth
 - Has one or more critical defects, or a combination of intermediate defects in sufficient number or to the extent that it requires considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair, or from serious damage to the structure
- Being homeless as defined in 24 CFR 578.3
- Living in a unit where the presence of a household member with certain characteristics (i.e., conviction for certain criminal activities) would result in the imminent placement of the family's child or children in out-of-home care, or the delay in the discharge of the child or children to the family from out-of-home care
- Living in housing not accessible to the family's disabled child or children due to the nature of the disability

- Living in an overcrowded unit, which is defined as living in a unit where one of the following conditions has been met:
 - The family is separated from its child or children and the parents are living in an otherwise standard housing unit, but, after the family is reunited, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or
 - The family is living with its child or children in a unit that is overcrowded for the entire family and this overcrowded condition may result, in addition to other factors, in the imminent placement of its child or children in out-of-home care.
 - For purposes of this definition, the determination as to whether the unit is overcrowded is made in accordance with the PHA subsidy standards in Chapter 5, Part III of this policy.

Since HUD does not define *imminent placement*, the partnering PCWA may use its discretion to determine whether the potential out of home placement of the family's child or children is imminent [FUP FAQs].

19-I.D. FUP YOUTH VOUCHER ELIGIBILITY CRITERIA

While FUP family vouchers operate as regular HCVs after the family is referred from the PCWA, there are several aspects of the FUP youth vouchers that make them distinct from the FUP family vouchers and from regular HCVs.

Eligibility Criteria

A FUP-eligible youth is a youth the PCWA has certified:

- Is at least 18 years old and not more than 24 years of age (has not yet reached their 25th birthday);
 - The FUP youth must be no more than 24 years old at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Has left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act;
 - Foster care placement can include, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes in accordance with 24 CFR 5.576.
- Is homeless or at risk of becoming homeless at age 16 or older;
 - *At risk of being homeless* is fully defined at 24 CFR 576.2.
 - o This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution).
 - o Therefore, youth being discharged from an institution may be eligible for a FUP voucher [FUP FAQs].
- Has an annual income at or below 30 percent of area median income; and
- Does not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to a supervised publicly or privately operated shelter designed to provide temporary living arrangements.

19-I.E. ASSISTANCE PERIOD [FR Notice 1/24/22]

Maximum Assistance Period

Although there is no time limit on FUP family vouchers, FUP youth vouchers are limited by statute. Unless the FUP youth meets an exception outlined below, after 36 months of assistance, the FUP youth voucher must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the 36-month limitation.

If the FUP youth does meet the requirements outlined below, the statutory limit on FUP assistance is a total of 60 months of FUP voucher assistance [FR Notice 1/24/22].

Extension of Assistance

FUP youth who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FUP youth cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FUP youth must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

A FUP youth will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA's FSS program if they certify that they meet one of the exceptions below:

- The FUP youth is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

PHA Policy

The PHA defines *incapacitated person* as **[insert definition under state and local law]**.

The PHA will apply this exception in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

The child or incapacitated person is not required to reside in the household in order for the youth to certify they meet this exception. For example, a child in a joint custody arrangement under the age of six who resides in the household only part-time may qualify the youth for this exception.

- The FUP youth is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

PHA Policy

The PHA will define *regular and active participation* in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

- The FUP youth is a person who is incapable of complying with the requirement to participate in a FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

PHA Policy

The PHA will apply this requirement in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

A FUP youth that meets one of the above exceptions must still be offered an opportunity to enroll in the PHA's FSS program (if it is available to them) and receive any supportive services available to FUP youth. A FUP youth may choose to participate in an FSS program or engage in education, workforce development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FUP youth an FSS slot during their first 36 months of receiving FUP youth assistance, the youth is considered to have been “unable to enroll” in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The youth was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

PHA Policy

The PHA will use the definitions of *recognized postsecondary credential* and *secondary school diploma or its recognized equivalent* under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The youth was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

PHA Policy

Youth must be enrolled in education activities on at least a half-time basis, as defined by the institution that they attend. However, the PHA may make exceptions to this requirement if the youth is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where the youth is enrolled.

- The youth was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The term *career pathway* means a combination of rigorous and high-quality education, training, and other services that:
 - Aligns with the skill needs of industries in the economy of the state or regional economy involved;
 - Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) (referred to individually in this Act as an *apprenticeship*, except in section 3226 of this title);
 - Includes counseling to support an individual in achieving the individual’s education and career goals;
 - Includes, as appropriate, education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;
 - Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
 - Enables an individual to attain a secondary school diploma or its recognized equivalent, and at least one recognized postsecondary credential; and
 - Helps an individual enter or advance within a specific occupation or occupational cluster.
- The youth was employed.

PHA Policy

The PHA will consider the youth to be employed if they work a minimum of 20 hours per week. The PHA may make exceptions to this requirement if the youth’s hours are reduced due to circumstances beyond their control or the youth must temporarily reduce their work hours due to a verified family emergency.

FSS Enrollment at 24 Months

If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, HUD encourages the PHA to remind the youth at the 24-month reexamination of the education, workforce development, and employment requirements described above so that the youth has enough time to meet these requirements prior to the expiration of the 36-month time period for FUP assistance.

PHA Policy

If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, the PHA will remind the youth at their second regular reexamination of the education, workforce development, and employment requirements described above.

FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The PHA must offer the slot to a FUP youth who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the youth previously declined an FSS slot because they met one of the statutory exceptions).
- The PHA must work with the youth to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the youth is engaged in and any statutory exceptions that apply to the youth, as well as the remaining time on their voucher.
- If the FUP youth accepts the FSS slot, the PHA must work with the youth to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

If the FUP youth is offered an FSS slot prior to the 36-month mark, the youth:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).
- Will not be considered to have been “unable to enroll” in the FSS program as described above, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months

The PHA may, but is not required to, offer a FUP youth an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the youth will have already received their second and final extension.

PHA Policy

If an FSS slot becomes available between the 48 and 60-month marks, the PHA will not offer the FSS slot to a FUP youth.

Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FUP youth assistance if the youth is participating in and in compliance with the FSS program as long as the youth is still eligible for the HCV program.

In any case, the FUP youth cannot receive more than a total of 60 months of FUP youth voucher assistance, even if the FSS Contract of Participation time period extends beyond the voucher 60-month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FUP youth has been unable to enroll in the program during the first 36 months of receiving FUP assistance, the FUP youth is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the youth engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the youth may have engaged in one of the education, workforce development, or employment activities described above or a combination of these activities.

Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FUP youth written notification informing them that they may receive an extension of their FUP assistance and providing instructions on how the youth may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FUP youth to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FUP assistance.

PHA Policy

The PHA will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time periods prior to the FUP youth's scheduled annual reexamination. The PHA will not verify compliance at the end of the 60-month time period.

The PHA will provide each FUP youth on the PHA's program with a written notification informing them that they may receive an extension of their FUP assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual reexamination date. When necessary, the PHA will provide this notification in a format accessible to FUP youth with disabilities and in a translated format for FUP youth with limited English proficiency in accordance with Chapter 2.

The PHA will use the following verification methods to verify a FUP youth's eligibility for voucher extensions:

To verify compliance with the FSS requirement, the PHA will examine its records to confirm, or obtain confirmation from the PHA's FSS program staff, that the FUP youth participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

To meet the education, workforce development, or employment requirement, the PHA will verify that the FUP youth was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of 36-month or 48-month time period, as applicable.

Due to the timing of when the PHA verifies compliance and conducts the annual reexamination, the FUP youth may have not yet met the nine-month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FUP/FYI youth will still be considered to have met the requirements.

In order for the FUP youth to meet one of the statutory exceptions described above, the youth must submit a certification to the PHA that they meet one of these exceptions. This certification is the only documentation that the FUP youth must submit in order to demonstrate that they meet one of the statutory exceptions.

A FUP youth who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FUP youth may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the youth meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the youth is still eligible for the HCV program, the PHA must provide the FUP youth the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FUP youth to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FUP assistance prior to the annual reexam.

If the FUP youth does not meet any of the conditions described in in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FUP youth voucher must be terminated once the youth reaches this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the youth entered into the initial lease agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the youth, not the number of months that the youth is in the FUP youth program. Prior to termination, the PHA must offer the FUP youth the opportunity to request an informal hearing, in accordance with Chapter 16.

19-I.F. REFERRALS AND WAITING LIST MANAGEMENT

Referrals

The PCWA must establish and implement a system to identify FUP-eligible families and youths within the agency's caseload and make referrals to the PHA. The PCWA must certify that the FUP applicants they refer to the PHA meet FUP eligibility requirements. The PHA is not required to maintain full documentation that demonstrates the family's or youth's FUP eligibility as determined by the PCWA but should keep the referral or certification from the PCWA.

PHA Policy

As part of the MOU, the PHA and PCWA have identified staff positions to serve as lead FUP liaisons. These positions will be responsible for transmission and acceptance of FUP referrals. The PCWA must commit sufficient staff and resources to ensure eligible families and youths are identified and determined eligible in a timely manner.

When FUP vouchers are available, the PHA liaison responsible for acceptance of referrals will contact the PCWA FUP liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date the PCWA receives this notification, the PCWA liaison will provide the PHA with a list of eligible referrals include the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating the youth or family is FUP-eligible.

The PHA will maintain a copy of the referral or certification from the PCWA in the participant's file along with other eligibility paperwork.

A PHA must serve any referrals (youths or families) that meet all program eligibility requirements. If a PHA determines that it has received a sufficient number of referrals from the PCWA so that the PHA will be able to lease all FUP vouchers awarded, the PHA may request that the PCWA suspend transmission of referrals. If the PHA determines that additional referrals will be needed after it has made such a request, the PHA may request that the PCWA resume transmission of referrals [Notice PIH 2011-52].

Waiting List Placement

A family that is already participating in the regular HCV program cannot be transferred to a FUP voucher.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new FUP applicants. If necessary, the PHA may open its waiting list solely for FUP applicants, but this information must be included in the PHA's notice of opening its waiting list (see section 4-II.C., Opening and Closing the Waiting List of this administrative plan).

PHA Policy

Within 10 business days of receiving the referral from the PCWA, the PHA will review the HCV waiting list and will send the PCWA a list confirming whether or not referrals are on the waiting list.

Referrals who are already on the list will retain their position and the list will be notated to indicate the family or youth is FUP-eligible.

For those referrals not already on the waiting list, the PHA will work with the PCWA to ensure they receive and successfully complete a pre-application or application, as applicable. Once the pre-application or application has been completed, the PHA will place the referral on the HCV waiting list with the date and time of the original referral and an indication that the referral is FUP-eligible.

Waiting List Selection

The PHA selects FUP-eligible families or youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

19-I.G. PHA HCV ELIGIBILITY DETERMINATION

Once a FUP-eligible family or youth is selected from the HCV waiting list, the PHA must determine whether the family or youth meets HCV program eligibility requirements. Applicants must be eligible under both FUP family or youth eligibility requirements, as applicable, and HCV eligibility requirements as outlined in Chapter 3 of this policy.

The PCWA may, but is not obligated to, provide information to the PHA on the family's criminal history.

PHA Policy

Subject to privacy laws, the PCWA will provide any available information regarding the applicant's criminal history to the PHA.

The PHA will consider the information in making its eligibility determination in accordance with the PHA's policies in Chapter 3, Part III.

Additional FUP Eligibility Factors [FUP FAQs]

For FUP family vouchers, the family must remain FUP-eligible thorough lease-up.

- If, after a family is referred by the PCWA but prior to issuing a family FUP voucher, the PHA discovers that the lack of adequate housing is no longer a primary factor for the family not reunifying, the FUP voucher may not be issued to the family.
- Similarly, if the FUP voucher has already been issued before the PHA discovers that the reunification will not happen, but the family has not yet leased up under the voucher, the PHA must not execute the HAP contract, as the family is no longer FUP-eligible.

FUP-eligible youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a FUP youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FUP youth voucher.

PHA Policy

Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by the PHA in writing following policies in Section 3-III.F., including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

19.I.H. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the family or youth will be issued a FUP voucher in accordance with PHA policies.

During the family briefing, PHAs must inform the FUP youth of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
- Supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FUP youth assistance.

PHA Policy

Eligible applicants will be notified by the PHA in writing following policies in Section 3-III.F. of this administrative plan. FUP families will attend a standard HCV briefing in accordance with PHA policies in Part I of Chapter 5 of this administrative plan. FUP youth will be briefed individually. The PHA will provide all aspects of the written and oral briefing as outlined in Part I of Chapter 5 but will also provide an explanation of the required items listed above, as well as discussing supportive services offered by the PCWA.

For both FUP youth and FUP families, vouchers will be issued in accordance with PHA policies in Chapter 5 Part II, except that the PHA will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

Once the family or youth locate a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA's policies (including, but not limited to: NSPIRE inspections, determination of rent reasonableness, etc.).

19-I.I. TERMINATION OF ASSISTANCE

General Requirements

With the exception of terminations of assistance for FUP youth after the statutorily required time period, terminations of FUP assistance are handled in the same way as the regular HCV program. Termination of a FUP voucher must be consistent with regulations for termination in 24 CFR Part 982, Subpart L and be in compliance with PHA policies (Chapter 12).

If the person who qualifies for the FUP voucher passes away, the family retains the FUP voucher. In the case of a FUP-youth voucher, assistance will terminate after the statutorily required time period, even if the FUP-eligible youth is no longer included in the household.

If the person who qualifies for the FUP voucher moves, the remaining family members may keep the FUP voucher based on PHA policy (see administrative plan, Section 3-I.C., Family Breakup and Remaining Member of Tenant Family).

FUP Family Vouchers

If parents lose their parental rights or are separated from their children after voucher lease-up (or their children reach adulthood), the family is still eligible to keep their FUP assistance, as the regulations do not permit HCV termination for a family losing parental rights or the children reaching adulthood. However, the PHA may transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the household.

PHA Policy

The PHA will transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the household and there is no prospect of any minor child being returned to the household.

If the PHA has no regular HCV vouchers available at the time this determination is made, including if no vouchers are available due to lack of funding, the PHA will issue the family the next available regular HCV voucher after those being issued to families residing in PBV units claiming Choice Mobility.

FUP Youth Vouchers

A PHA cannot terminate a FUP youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FUP youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of a FUP youth voucher holder to regular HCV assistance upon the expiration of the statutorily required time period. However, the PHA may issue a regular HCV to FUP youth if they were selected from the waiting list in accordance with PHA policies and may also adopt a preference for FUP youth voucher holders who are being terminated for this reason.

PHA Policy

The PHA will not provide a selection preference on the PHA's HCV waiting list for FUP youth who are terminated due to the time limit on assistance.

Upon the expiration of the statutorily required time period, a FUP youth voucher holder who has children and who lacks adequate housing may qualify for a FUP family voucher provided they are referred by the PCWA as an eligible family and meet the eligibility requirements for the PHA's HCV program.

9-I.J. FUP PORTABILITY

Portability for a FUP family or youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for a FUP family or youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

A FUP family or youth does not have to port to a jurisdiction that administers FUP.

If the receiving PHA administers the FUP voucher on behalf of the initial PHA, the voucher is still considered a FUP voucher regardless of whether the receiving PHA has a FUP program.

If the receiving PHA absorbs the voucher, the receiving PHA may absorb the incoming port into its FUP program (if it has one) or into its regular HCV program (if the receiving PHA has vouchers available to do so) and the family or youth become regular HCV participants. In either case, when the receiving PHA absorbs the voucher, a FUP voucher becomes available to the initial PHA.

Considerations for FUP Youth Vouchers

If the voucher is a FUP youth voucher and remains such upon lease-up in the receiving PHA's jurisdiction, termination of assistance must still take place once the youth has received assistance for the statutorily required time period. If the receiving PHA is administering the FUP youth voucher on behalf of the initial PHA, the two PHAs must work together to initiate termination upon expiration of the statutorily required time period.

19-I.K. PROJECT-BASING FUP VOUCHERS [Notice PIH 2017-21; FR Notice 1/24/22]

The PHA may project-base FUP vouchers without HUD approval in accordance with Notice PIH 2017-21, FR Notice 1/24/22, and all statutory and regulatory requirements for the PBV program. Project-based FUP vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

The PHA may limit PBVs to one category of FUP-eligible participants (families or youth) or a combination of the two.

While FUP vouchers can be used for either families or youth, a PBV unit may only be counted towards the PHA's 10 percent exception authority under the program cap and the project's income-mixing requirement if the FUP PBV assistance is provided on behalf of an eligible youth. The PHA must amend its administrative plan to include the limitation of these FUP PBV units to eligible youth.

PHA Policy

The PHA will not project-base FUP vouchers. All FUP vouchers will be used to provide tenant-based assistance.

PART II: FOSTER YOUTH TO INDEPENDENCE INITIATIVE

19-II.A. PROGRAM OVERVIEW [Notice PIH 2020-28; Notice PIH 2023-04; FR Notice 1/24/22]

The Foster Youth to Independence (FYI) initiative was announced in 2019. The FYI initiative allows PHAs who partner with a Public Child Welfare Agency (PCWA) to request targeted HCVs to serve eligible youth with a history of child welfare involvement that are homeless or at risk of being homeless. Rental assistance and supportive services are provided to qualified youth for a period of between 36 and 60 months.

Funding is available either competitively through an FYI NOFA or noncompetitively on a rolling basis in accordance with the application requirements outlined in Notice PIH 2020-28, Notice PIH 2021-26, or Notice PIH 2023-04, as applicable. Under the noncompetitive process, PHAs are limited to 25 vouchers in a fiscal year with the ability to request additional vouchers. Where the PHA has a combined FYI and/or FUP size of no more than 10 vouchers, the PHA may request FYI vouchers with at least 50 percent utilization of its FUP and/or FYI vouchers. Where the PHA has a combined FYI and/or FUP size of 11 or more vouchers, the PHA may request FYI vouchers with 90 percent or greater utilization of its FUP and/or FYI vouchers. For competitive awards, the number of vouchers is dependent on PHA program size and need.

19-II.B. PARTNERING AGENCIES [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar]

Public Child Welfare Agency (PCWA)

The PHA must enter into a partnership agreement with a PCWA in the PHA's jurisdiction in the form of a Memorandum of Understanding (MOU) or letter of intent. The PCWA is responsible for identifying and referring eligible youth to the PHA and providing or securing a commitment for the provision of supportive services once youth are admitted to the program.

PHA Policy

The PHA will implement a Foster Youth to Independence (FYI) program in partnership with *[insert name(s) of PCWA(s)]*.

The PCWA is responsible for:

- Identifying FYI-eligible youth;
- Developing a system of prioritization based on the level of need of the youth and the appropriateness of intervention;
- Providing a written certification to the PHA that the youth is eligible; and
- Providing or securing supportive services for 36 months.

Continuum of Care (CoC) and Other Partners

HUD strongly encourages PHAs to add other partners into the partnership agreement with the PCWA such as state, local, philanthropic, faith-based organizations, and the CoC, or a CoC recipient it designates.

PHA Policy

In addition to the PCWA, the PHA will implement the FYI program in partnership with *[insert names of any other partners the PHA designates in the partnership agreement]*.

19-II.C. YOUTH ELIGIBILITY CRITERIA [Notice PIH 2023-04; FYI Q&As; FYI FAQs]

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. As determined by the PCWA, eligible youth:

- Are at least 18 years of age and not more than 24 years of age (have not yet reached their 25th birthday);
 - Youth must be no more than 24 years of age at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act;
 - Placements can include, but are not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes in accordance with 24 CFR 5.576;
- Are homeless or at risk of becoming homeless at age 16 and older;
 - *At risk of being homeless* is fully defined at 24 CFR 576.2.
 - o This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution). Therefore, youth being discharged from an institution may be eligible for an FYI voucher [FYI FAQs].

Eligibility is not limited to single persons. For example, pregnant and/or parenting youth are eligible to receive assistance assuming they otherwise meet eligibility requirements.

19-II.D. SUPPORTIVE SERVICES [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar; FYI Q&As]

Supportive services may be provided by the PHA, PCWA, or a third party. The PCWA must provide or secure a commitment to provide supportive services for participating youth for the period of time defined in the NOFA/O for which the funding was made available. At a minimum, the following supportive services must be offered:

- Basic life skills information/counseling on money management, use of credit, housekeeping, proper nutrition/meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance/referrals for assistance on security deposits, utility hook-up fees, and utility deposits;
- Providing such assurances to owners of rental property as are reasonable and necessary to assist eligible youth to rent a unit with a voucher;
- Job preparation and attainment counseling (where to look/how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED) or attendance/financing of education at a technical school, trade school, or college, including successful work ethic and attitude models.

PHA Policy

Additional supportive services will not be offered.

Since participation in supportive services is optional, but strongly encouraged, an FYI participant may decline supportive services.

19-II.E. REFERRALS AND WAITING LIST MANAGEMENT [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar FYI FAQs]

Referrals

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. Once the PCWA sends the PHA the referral certifying the youth is program-eligible, the PHA determines HCV eligibility.

The PCWA must have a system for identifying eligible youth within the agency's caseload and reviewing referrals from other partners, as applicable. The PCWA must also have a system for prioritization of referrals to ensure that youth are prioritized for an FYI voucher based upon their level of need and appropriateness of the intervention.

Referrals may come from other organizations in the community who work with the population, but the PCWA must certify that the youth meets eligibility requirements, unless the PCWA has vested another organization with this authority.

The PHA is not required to maintain full documentation that demonstrates the youth's eligibility as determined by the PCWA but should keep the referral or certification from the PCWA. The PCWA is not required to provide the PHA with HCV eligibility documents.

PHA Policy

The PHA and PCWA have identified staff positions to serve as lead FYI liaisons. These positions will be responsible for transmission and acceptance of referrals. The PCWA must commit sufficient staff and resources to ensure eligible youths are identified, prioritized, and determined eligible in a timely manner.

When vouchers are available, the PHA liaison responsible for acceptance of referrals will contact the PCWA liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date the PCWA receives this notification, the PCWA liaison must provide the PHA with a list of eligible referrals, a completed release form, and a written certification for each referral indicating the referral is eligible. The list will include the name, address, and contact phone number for each adult individual who is being referred.

The PHA will maintain a copy of each certification from the PCWA in the participant's file along with other eligibility paperwork.

Waiting List Placement [Notice PIH 2023-04 and FYI FAQs]

The PHA must use the HCV waiting list for the FYI program. Youth already on the HCV program may not be transferred to an FYI voucher since they are not homeless or at-risk of homelessness.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new referrals. The PHA may reopen the waiting list to accept an FYI eligible youth without opening the waiting list for other applicants; however, the requirements at 24 CFR 982.206 for giving public notice when opening and closing the waiting list apply (see section 4-II.C., Opening and Closing the Waiting List of this administrative plan).

PHA Policy

Within 10 business days of receiving the referral from the PCWA, the PHA will review the HCV waiting list and will send the PCWA a list confirming whether or not referrals are on the waiting list.

Referrals who are already on the list will retain their position and the list will be notated to indicate the applicant is FYI-eligible.

For those referrals not already on the waiting list, the PHA will work with the PCWA to ensure they receive and successfully complete a pre-application or application, as applicable. Once the pre-application or application has been completed, the PHA will place the referral on the HCV waiting list with the date and time of the original referral and an indication that the referral is FYI-eligible.

Waiting List Selection

The PHA selects eligible youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

19-II.F. PHA HCV ELIGIBILITY DETERMINATION [FYI FAQs]

Once an eligible youth is selected from the HCV waiting list, the PHA must determine whether the youth meets HCV program eligibility requirements. Applicants must be eligible under both FYI eligibility requirements and HCV eligibility requirements as outlined in Chapter 3 of this policy.

The PCWA may, but is not obligated to, provide information to the PHA on the youth's criminal history.

PHA Policy

Subject to privacy laws, the PCWA will provide any available information regarding the applicant's criminal history to the PHA.

The PHA will consider the information in making its eligibility determination in accordance with the PHA's policies in Chapter 3, Part III.

Additional Eligibility Factors

Youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FYI voucher.

PHA Policy

Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by the PHA in writing following policies in Section 3-III.F, including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

19-II.G. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the youth will be issued an FYI voucher in accordance with PHA policies.

During the family briefing, PHAs must inform the FYI voucher holder of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
- The supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FYI assistance.

PHA Policy

Eligible applicants will be notified by the PHA in writing following policies in Section 3-III.F. of this policy. FYI youth will be briefed individually. The PHA will provide all aspects of the written and oral briefing as outlined in Part I of Chapter 5.

Vouchers will be issued in accordance with PHA policies in Chapter 5, Part II, except that the PHA will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

Once the youth locates a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA policy in Chapter 9.

Should a youth fail to use the voucher, the PHA may issue the voucher to another eligible youth if one has been identified [Notice PIH 2023-04].

Turnover [Notice PIH 2023-04]

Awards of FYI Tenant Protection Vouchers (TPVs) continue to be administered under the requirements of Notice PIH 2019-20. This includes turnover requirements and the requirement to inform HUD should a youth not use a voucher or leave the program. For example, FYI TPVs awarded under Notice PIH 2019-20 “sunset” when a youth leaves the program. This means that the PHA cannot reissue FYI TPV assistance issued under that notice to another youth when an initial youth exits the HCV program. HUD does not have the authority to allow the voucher to be used for a youth other than the one identified in the request.

19-II.H. MAXIMUM ASSISTANCE PERIOD [Notice PIH 2023-04 and FYI FAQs; FR Notice 1/24/22]

Vouchers are limited by statute to a total of between 36 months and 60 months of housing assistance. At the end of the statutory time period, assistance must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the limitation. It is not permissible to reissue another FYI TPV to the same youth upon expiration of their FYI assistance.

Participants do not “age out” of the program. A participant may continue with the program until they have received the period of assistance for which they are eligible. Age limits are only applied for entry into the program.

Extension of Assistance

FYI voucher holders who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FYI voucher holders cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FYI voucher holders must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

FYI voucher holders will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA’s FSS program if they certify that they meet one of the exceptions below:

- The FYI voucher holder is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

PHA Policy

The PHA defines *incapacitated person* as **[insert definition under state and local law]**. The PHA will apply this exception in a manner that provides extensions of FYI assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

The child or incapacitated person is not required to reside in the household in order for the FYI voucher holder to certify they meet this exception. For example, a child in a joint custody arrangement under the age of six who resides in the household only part time may qualify the FYI voucher holder for this exception.

- The FYI voucher holder is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

PHA Policy

The PHA will define *regular and active participation* in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

- The FYI voucher holder is a person who is incapable of complying with the requirement to participate in a FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

PHA Policy

The PHA will apply this requirement in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

An FYI voucher holder that meets one of the above exceptions must still be offered an opportunity to enroll in the PHA's FSS program (if it is available to them) and receive any supportive services available to FYI voucher holders. An FYI voucher holder may choose to participate in an FSS program or engage in education, workforce development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FYI voucher holder an FSS slot during their first 36 months of receiving FYI assistance, the FYI voucher holder is considered to have been “unable to enroll” in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The FYI voucher holder was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

PHA Policy

The PHA will use the definitions of *recognized postsecondary credential* and *secondary school diploma or its recognized equivalent* under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The FYI voucher holder was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

PHA Policy

The FYI voucher holder must be enrolled in education activities on at least a half-time basis, as defined by the institution which they attend. However, the PHA may make exceptions to this requirement if the FYI voucher holder is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where they are enrolled.

- The FYI voucher holder was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).
- The FYI voucher holder was employed.

PHA Policy

The PHA will consider the FYI voucher holder to be employed if they work a minimum of 20 hours per week. The PHA may make exceptions to this requirement if the FYI voucher holder's hours are reduced due to circumstances beyond their control or the FYI voucher holder must temporarily reduce their work hours due to a verified family emergency.

FSS Enrollment at 24 Months

If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, HUD encourages the PHA to remind the FYI voucher holder at the 24-month reexamination of the education, workforce development, and employment requirements described above so that they have enough time to meet these requirements prior to the expiration of the 36-month time period for FYI assistance.

PHA Policy

If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, the PHA will remind the FYI voucher holder at their second regular reexamination of the education, workforce development, and employment requirements described above.

FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The PHA must offer the slot to an FYI voucher holder who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the FYI voucher holder previously declined an FSS slot because they met one of the statutory exceptions).
- The PHA must work with the FYI voucher holder to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the FYI voucher holder is engaged in and any statutory exceptions that apply to the FYI voucher holder, as well as the remaining time on their voucher.
- If the FYI voucher holder accepts the FSS slot, the PHA must work with them to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

If the FYI voucher holder is offered an FSS slot prior to the 36-month mark, the FYI voucher holder:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).

- Will not be considered to have been “unable to enroll” in the FSS program, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months

The PHA may, but is not required, to offer an FYI voucher holder an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the FYI voucher holder will have already received their second and final extension.

PHA Policy

If an FSS slot becomes available between the 48 and 60-month marks, the PHA will not offer the FSS slot to an FYI voucher holder.

Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FYI assistance if the FYI voucher holder is participating in and in compliance with the FSS program as long as the FYI voucher holder is still eligible for the HCV program.

In any case, the FYI voucher holder cannot receive more than a total of 60 months of FYI assistance even if the FSS Contract of Participation time period extends beyond the voucher 60-month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FYI voucher holder has been unable to enroll in the program during the first 36 months of receiving FYI assistance, the FYI voucher holder is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the FYI voucher holder engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the FYI voucher holder may have engaged in one of the education, workforce development, or employment activities described above or a combination of these activities.

Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FYI voucher holder written notification informing them that they may receive an extension of their FYI assistance and providing instructions on how the FYI voucher holder may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FYI voucher holder to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FYI assistance.

PHA Policy

The PHA will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time periods prior to the FYI voucher holder's scheduled annual reexamination. The PHA will not verify compliance at the end of the 60-month time period.

The PHA will provide each FYI voucher holder on the PHA's program with a written notification informing them that they may receive an extension of their FYI assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual reexamination date. When necessary, the PHA will provide this notification in a format accessible to FYI voucher holders with disabilities and in a translated format for FYI voucher holders with limited English proficiency in accordance with Chapter 2.

The PHA will use the following verification methods to verify an FYI voucher holder's eligibility for voucher extensions:

To verify compliance with the FSS requirement, the PHA will examine its records to confirm, or obtain confirmation from the PHA's FSS program staff, that the FYI participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

To meet the education, workforce development, or employment requirement, the PHA will verify that the FYI voucher holder was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of the 36-month or 48-month time period, as applicable.

Due to the timing of when the PHA verifies compliance and conducts the annual reexamination, the FYI voucher holder may have not yet met the nine-month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FYI voucher holder will still be considered to have met the requirements.

In order for the FYI voucher holder to meet one of the statutory exceptions described above, the FYI voucher holder must submit a certification to the PHA that they meet one of these exceptions. This certification is the only documentation that the FYI voucher holder must submit in order to demonstrate that they meet one of the statutory exceptions.

An FYI voucher holder who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FYI voucher holder may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the FYI voucher holder meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the FYI voucher holder is still eligible for the HCV program, the PHA must provide the FYI voucher holder the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FYI voucher holder to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FYI assistance prior to the annual reexam.

If the FYI voucher holder does not meet any of the statutory conditions described in in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FYI voucher must be terminated once they reach this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the FYI voucher holder entered into the initial lease agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the FYI voucher holder, not the number of months that they are in the FYI program. Prior to termination, the PHA must offer the FYI voucher holder the opportunity to request an informal hearing, in accordance with Chapter 16.

19-II.I. TERMINATION OF ASSISTANCE [FYI FAQs]

Termination of a FYI voucher is handled in the same way as with any HCV; therefore, termination of a FYI voucher must be consistent with HCV regulations at 24 CFR Part 982, Subpart L and PHA policies in Chapter 12. Given the statutory time limit that requires FYI vouchers to sunset, a PHA must terminate the youth's assistance once the limit on assistance has expired.

A PHA cannot terminate a FYI youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FYI youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of FYI voucher holders to regular HCV assistance upon the expiration of the limit on assistance. However, the PHA may issue a regular HCV to FYI voucher holders if they were selected from the waiting list in accordance with PHA policies. The PHA may also adopt a waiting list preference for FYI voucher holders who are being terminated for this reason.

PHA Policy

The PHA will not provide a selection preference on the PHA's HCV waiting list for FYI voucher holders who are terminated due to the time limit on assistance.

19-II.J. PORTABILITY [FYI FAQs]

Portability for an FYI youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for an FYI youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

An FYI youth does not have to port to a jurisdiction that administers FYI vouchers.

If the receiving PHA absorbs the voucher, the PHA may absorb the youth into its regular HCV program if it has vouchers available to do so. If the receiving PHA absorbs the youth into its regular HCV program, that youth becomes a regular HCV participant with none of the limitations of an FYI voucher.

The initial and receiving PHA must work together to initiate termination of assistance upon expiration of the time limit on assistance.

19-II.K. PROJECT-BASING FYI VOUCHERS [FYI FAQs; FR Notice 1/24/22; Notice PIH 2024-03]

PHAs that have initiated the selection process to project-base FYI and/or FUP vouchers may be eligible to project-base FYI and FUP units formally identified for project basing in accordance with all applicable PBV regulations and PHA policies in Chapter 17. This includes FYI vouchers awarded under Notices PIH 2020-28, PIH 2021-26, and PIH 2023-04. Assistance awarded under Notice PIH 2019-20 is prohibited from being project-based.

PHA Policy

The PHA will not project-base FYI vouchers. All FYI vouchers will be used to provide tenant-based assistance.

PART III: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

19-III.A. OVERVIEW

Since 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans. The Veterans Affairs Supportive Housing (VASH) program combines HCV rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) at VA medical centers (VAMCs) and Community-Based Outpatient Clinics (CBOCs), or through a designated service provider (DSP) as approved by the VA Secretary. Eligible families are homeless veterans and their families that agree to participate in VA case management and are referred to the VAMC's partner PHA for HCV assistance. The VAMC or DSP's responsibilities include:

- Screening homeless veterans to determine whether they meet VASH program participation criteria;
- Referring homeless veterans to the PHA;
 - The term *homeless veteran* means a veteran who is homeless (as that term is defined in subsection (a) or (b) of Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302)). See 38 U.S.C. 2002.
- Providing appropriate treatment and supportive services to potential VASH participants, if needed, prior to PHA issuance of a voucher;
- Providing housing search assistance to VASH participants;
- Identifying the social service and medical needs of VASH participants, and providing or ensuring the provision of regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and
- Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

VASH vouchers are awarded noncompetitively based on geographic need and PHA administrative performance. Eligible PHAs must be located within the jurisdiction of a VAMC and in an area of high need based on data compiled by HUD and the VA. When Congress funds a new allocation of VASH vouchers, HUD invites eligible PHAs to apply for a specified number of vouchers.

Generally, the HUD-VASH program is administered in accordance with regular HCV program requirements. However, HUD is authorized to waive or specify alternative requirements to allow PHAs to effectively deliver and administer VASH assistance. Alternative requirements are established in the HUD-VASH Operating Requirements, which were originally published in the Federal Register on May 6, 2008, and updated September 27, 2021. Unless expressly waived by HUD, all regulatory requirements and HUD directives regarding the HCV program are applicable to VASH vouchers, including the use of all HUD-required contracts and other forms, and all civil rights and fair housing requirements. In addition, the PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program.

The VASH program is administered in accordance with applicable Fair Housing requirements since civil rights requirements cannot be waived under the program. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination Act and all PHA policies as outlined in Chapter 2 of this document.

When HUD-VASH recipients include veterans with disabilities or family members with disabilities, reasonable accommodation requirements in Part II of Chapter 2 of this policy apply.

19-III.B. REFERRALS [FR Notice 9/27/21 and HUD-VASH Qs and As]

VAMC case managers will screen all families in accordance with VA screening criteria and refer eligible families to the PHA for determination of program eligibility and voucher issuance. The PHA has no role in determining or verifying the veteran's eligibility under VA screening criteria, including determining the veteran's homelessness status. The PHA must accept referrals from the partnering VAMC and must maintain written documentation of referrals in VASH tenant files. Upon turnover, VASH vouchers must be issued to eligible veteran families as identified by the VAMC.

PHA Policy

In order to expedite the screening process, the PHA will provide all forms and a list of documents required for the VASH application to the VAMC. Case managers will work with veterans to fill out the forms and compile all documents prior to meeting with the PHA and submitting an application. When feasible, the VAMC case manager should email or fax copies of all documents to the PHA prior to the meeting in order to allow the PHA time to review them and start a file for the veteran.

After the VAMC has given the PHA a complete referral, the PHA will perform an eligibility screening within five business days of receipt of a VAMC referral.

19-III.C. HCV PROGRAM ELIGIBILITY [FR Notice 9/27/21]

Eligible participants are homeless veterans and their families who agree to participate in case management from the VAMC.

- A *VASH Veteran* or *veteran family* refers to either a single veteran or a veteran with a household composed of two or more related persons. It also includes one or more eligible persons living with the veteran who are determined to be important to the veteran's care or well-being.
- A veteran for the purpose of VASH is a person whose length of service meets statutory requirements, and who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and is eligible for VA health care.

Under VASH, PHAs do not have authority to determine family eligibility in accordance with HCV program rules and PHA policies. The only reasons for denial of assistance by the PHA are failure to meet the income eligibility requirements and/or that a family member is subject to a lifetime registration requirement under a state sex offender registration program. Under portability, the receiving PHA must also comply with these VASH screening requirements.

Social Security Numbers

When verifying Social Security numbers (SSNs) for homeless veterans and their family members, an original document issued by a federal or state government agency, which contains the name and SSN of the individual along with other identifying information of the individual, is acceptable in accordance with Section 7-II.B. of this policy.

In the case of the homeless veteran, the PHA must accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN and cannot require the veteran to provide a Social Security card. A VA-issued identification card may also be used to verify the SSN of a homeless veteran.

Proof of Age

The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other PHA-required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a homeless veteran.

Photo Identification

A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification. These cards also serve as verification of SSNs and date of birth.

Income Eligibility

The PHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for HCV assistance.

While income-targeting does not apply to VASH vouchers, the PHA may include the admission of extremely low-income VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

PHA Policy

While income-targeting requirements will not be considered by the PHA when families are referred by the partnering VAMC, the PHA will include any extremely low-income VASH families that are admitted in its income targeting numbers for the fiscal year in which these families are admitted.

Screening

The PHA may not screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 and 982.553 with one exception: the PHAs is still required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, with the exception of denial for registration as a lifetime sex offender under state law and PHA policies on how sex offender screenings will be conducted, PHA policy in Sections 3-III.B. through 3-III.E. do not apply to VASH. The prohibition against screening families for anything other than lifetime sex offender status applies to all family members, not just the veteran.

If a family member is subject to lifetime registration under a state sex offender registration program, the remaining family members may be served if the family agrees to remove the sex offender from its family composition. This is true unless the family member subject to lifetime registration under a state sex offender registration program is the homeless veteran, in which case the family would be denied admission to the program [New HCV GB, *HUD-VASH*, p. 6].

Denial of Assistance [Notice PIH 2008-37]

Once a veteran is referred by the VAMC, the PHA must either issue a voucher or deny assistance. If the PHA denies assistance, it must provide the family with prompt notice of the decision and a brief statement of the reason for denial in accordance with Section 3-III.F. Like in the standard HCV program, the family must be provided with the opportunity for an informal review in accordance with policies in Section 3-III.F. In addition, a copy of the denial notice must be sent to the VAMC case manager.

19-III.D. CHANGES IN FAMILY COMPOSITION

Adding Family Members [FR Notice 9/27/21]

When adding a family member after the family has been admitted to the program, PHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and will apply its regular screening criteria in doing so.

Remaining Family Members [HUD-VASH Qs and As]

If the homeless veteran dies while the family is being assisted, the voucher would remain with the remaining members of the tenant family. The PHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible family. If a regular voucher is not available, the family would continue utilizing the VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

Family Break Up [HUD-VASH Qs and As]

In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides the PHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

19-III.E. LEASING [FR Notice 9/27/21]

Waiting List

The PHA does not have the authority to maintain a waiting list or apply local preferences for HUD–VASH vouchers. Policies in Chapter 4 relating to applicant selection from the waiting list, local preferences, special admissions, cross-listing, and opening and closing the waiting list do not apply to VASH vouchers.

Exception Payment Standards

To assist VASH participants in finding affordable housing, especially in competitive markets, HUD allows PHAs to establish a HUD-VASH exception payment standard. PHAs may go up to but no higher than 120 percent of the published area-wide fair market rent (FMR) or small area fair market rent (SAFMR) specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD through the regular waiver process outlined in Notice PIH 2018-16.

Voucher Issuance

Unlike the standard HCV program which requires an initial voucher term of at least 60 days, VASH vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

PHA Policy

All VASH vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

The PHA must track issuance of HCVs for families referred by the VAMC or DSP in PIC as required in Notice PIH 2011-53.

Initial Lease Term

Unlike in the standard the HCV program, VASH voucher holders may enter into an initial lease that is for less than 12 months. Accordingly, PHA policy in Section 9-I.E., Term of Assisted Tenancy, does not apply.

Ineligible Housing [FR Notice 6/18/14]

Unlike in the standard HCV program, VASH families are permitted to live on the grounds of a VA facility in units developed to house homeless veterans. This applies to both tenant-based assistance and PBV. Therefore, 24 CFR 982.352(a)(5) and 983.53(a)(2), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, do not apply to VASH for this purpose only. Accordingly, PHA policy in 9-I.D., Ineligible Units, does not apply for this purpose only.

Pre-Inspections

To expedite the leasing process, PHAs may pre-inspect available units that veterans may be interested in leasing in order to maintain a pool of eligible units. If a VASH family selects a unit that passed an NSPIRE inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (Form HUD-52517), the unit may be approved if it meets all other conditions under 24 CFR 982.305. However, the veteran must be free to select their unit and cannot be steered to these units.

PHA Policy

To expedite the leasing process, the PHA may pre-inspect available units that veterans may be interested in leasing to maintain a pool of eligible units. If a VASH family selects a unit that passed a pre-inspection (without intervening occupancy) within 45 days of the date of the RTA, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The veteran will be free to select their unit.

When a pre-inspected unit is not selected, the PHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for both initial and any required reinspections.

19-III.F. PORTABILITY [FR Notice 9/27/21 and Notice PIH 2011-53]

General Requirements

Portability policies under VASH depend on whether the family wants to move within or outside of the initial VA facility's catchment area (the area in which the VAMC or DSP operates). In all cases, the initial VA facility must be consulted prior to the move and provide written confirmation that case management will continue to be provided in the family's new location. VASH participant families may only reside in jurisdictions that are accessible to case management services, as determined by case managers at the partnering VAMC or DSP.

Under VASH, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied. As a result, PHA policies in Section 10-II.B. about nonresident applicants do not apply.

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

Portability within the Initial VAMC or DSP's Catchment Area

A VASH family can move within the VAMC's catchment area as long as case management can still be provided, as determined by the VA. If the initial PHA's partnering VAMC will still provide the case management services, the receiving PHA must process the move in accordance with portability procedures:

- If the receiving PHA has been awarded VASH vouchers, it can choose to either bill the initial PHA or absorb the family if it has a VASH voucher available to do so.
 - If the PHA absorbs the family, the VAMC or DSP providing the initial case management must agree to the absorption and the transfer of case management.
- If the receiving PHA does not administer a VASH program, it must always bill the initial PHA.

Portability Outside of the Initial VAMC or DSP's Catchment Area

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or DSP to provide case management services, the initial VAMC or DSP must first determine that the VASH family could be served by another VAMC or DSP that is participating in the VASH program, and the receiving PHA has an available VASH voucher.

In these cases, the family must be absorbed by the receiving PHA either as a new admission or as a portability move-in, as applicable. Upon absorption, the initial PHA's VASH voucher will be available to lease to a new VASH-eligible family, and the absorbed family will count toward the number of VASH slots awarded to the receiving PHA.

Portability Outside of the Initial VAMC or DSP's Catchment Area under VAWA

Veterans who request to port beyond the catchment area of the VAMC or DSP where they are receiving case management to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believes they are threatened with imminent harm from further violence by remaining in the unit may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan (see Exhibit 16-3). PHAs may require verbal self-certification or a written request from a participant seeking a move beyond the catchment area of the VAMC or DSP.

The verbal self-certification or written request must include either a statement expressing why the participant reasonably believes that there is a threat of imminent harm from further violence if they were to remain in the same unit or a statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the participants request for the move.

The participant must still port to a PHA that has a VASH program. If the receiving PHA does not have a VASH voucher available to lease, they may bill the initial PHA until a VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

19-III.G. TERMINATION OF ASSISTANCE [FR Notice 9/27/21]

With the exception of terminations for failure to receive case management, HUD has not established any alternative requirements for termination of assistance for VASH participants. However, prior to terminating VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) as outlined in Section 12-II.D. of this policy and consider all relevant circumstances of the specific case. This includes granting reasonable accommodations for persons with disabilities, as well as considering the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination.

VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to the PHA but could not be considered at the time of admission due to VASH program requirements. The PHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

Cessation of Case Management

As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive case management services from the VAMC or DSP. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or DSP.

However, a VAMC or DSP determination that the participant family no longer requires case management is not grounds for termination of voucher or PBV assistance. In such a case, at its option, the PHA may offer the family continued assistance through one of its regular vouchers. If the PHA has no voucher to offer, the family will retain its VASH voucher or PBV unit until such time as the PHA has an available voucher for the family.

VAWA [FR Notice 9/27/21]

When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim must be given a regular HCV if one is available, and the perpetrator's VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available, the perpetrator must be terminated from assistance and the victim will continue to use the VASH voucher.

19-III.H. PROJECT-BASING VASH VOUCHERS

General Requirements [Notice PIH 2017-21 and FR Notice 9/27/21]

PHAs are authorized to project-base their tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. In addition, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. Note that VASH supportive services only need to be provided to VASH families receiving PBV assistance in the project, not all families receiving PBV assistance in the project. If a VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit as long as the family resides in the unit.

If the PHA project-bases VASH vouchers, the PHA must consult with the partnering VAMC or DSP to ensure approval of the project or projects. PHAs may project-base VASH vouchers in projects alongside other PBV units and may execute a single HAP contract covering both the VASH PBVs and the other PBVs. The PHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a HUD set-aside award.

If a VASH family is referred to the PHA and there is an available PBV unit that is not exclusively made available to VASH families, the PHA may offer to refer the family to the owner if allowable under the selection policy for that project, and the owner and PHA may amend the HAP contract to designate the PBV unit as a VASH PBV unit.

The PHA and owner may agree to amend a PBV HAP contract to redesignate a regular PBV unit as a unit specifically designated for VASH families so long as the PHA first consults with the VAMC or DSP. Additionally, the PHA and owner may agree to amend a PBV HAP contract to redesignate a unit specifically designated for VASH families as a regular PBV unit, so long as the unit is not funded through a VASH PBV set-aside award and is eligible for regular PBV (i.e., the unit is not on the grounds of a medical facility and the unit is eligible under the PHA's program and project caps).

Policies for VASH PBV units will generally follow PHA policies for the standard PBV program as listed in Chapter 17, with the exception of the policies listed below.

Failure to Participate in Case Management [FR Notice 9/27/21]

Upon notification by the VAMC or DSP of the family's failure to participate, without good cause, in case management, the PHA must provide the family a reasonable time period to vacate the unit. The PHA must terminate assistance to the family at the earlier of either the time the family vacates or the expiration of the reasonable time period given to vacate.

PHA Policy

Upon notification by the VAMC or DSP that a VASH PBV family has failed to participate in case management without good cause, the PHA will provide written notice of termination of assistance to the family and the owner within 10 business days. The family will be given 60 days from the date of the notice to move out of the unit.

The PHA may make exceptions to this 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, the PHA must remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. The PHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

Moves [HUD-VASH Qs and As, FR Notice 9/27/21]

When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA may require a family who still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days;
- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher. Alternatively, the PHA may allow the family to move with its VASH voucher without having to meet this 180-day period. In either case, the PHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless the PHA and owner agree to temporarily remove the unit from the HAP contract; and
- If a VASH veteran is determined to no longer require case management, the PHA must allow the family to move with the first available tenant-based voucher if no VASH voucher is immediately available and cannot require the family to wait for a VASH voucher to become available.

PART IV: MAINSTREAM VOUCHER PROGRAM

19-IV.A. PROGRAM OVERVIEW [Notice PIH 2020-01]

Mainstream vouchers assist non-elderly persons with disabilities and their families in the form of either project-based or tenant-based voucher assistance.

Aside from separate funding appropriations and serving a specific population, Mainstream vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a Mainstream voucher differently from other applicants and participants. For example, the PHA cannot apply different payment standards, establish conditions for allowing portability, or apply different screening criteria to Mainstream families.

The Mainstream voucher program, (previously referred to as the Mainstream 5-Year program or the Section 811 voucher program) was originally authorized under the National Affordable Housing Act of 1990. Mainstream vouchers operated separately from the regular HCV program until the passage of the Frank Melville Supportive Housing Investment Act of 2010. Funding for Mainstream voucher renewals and administrative fees was first made available in 2012. In 2017 and 2019, incremental vouchers were made available for the first time since the Melville Act (in addition to renewals and administrative fees), and PHAs were invited to apply for a competitive award of Mainstream vouchers under the FY17 and FY19 NOFAs. In 2020, Notice PIH 2020-22 provided an opportunity for any PHA administering an HCV program to apply for Mainstream vouchers noncompetitively, while Notice PIH 2020-09 authorized an increase in Mainstream voucher units and budget authority for those PHAs already awarded Mainstream vouchers under the FY17 and FY19 NOFAs.

Funds for Mainstream vouchers may be recaptured and reallocated if the PHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for the PHA's Mainstream vouchers.

19-IV.B. ELIGIBLE POPULATION [Notice PIH 2020-01 and Notice PIH 2020-22]

All Mainstream vouchers must be used to serve non-elderly persons with disabilities and their families, defined as any family that includes a person with disabilities who is at least 18 years old and not yet 62 years old as of the effective date of the initial HAP contract. The eligible disabled household member does not need to be the head of household.

The definition of person with disabilities for purposes of Mainstream vouchers is the statutory definition under section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not “age out” of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The PHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

19-IV.C. PARTNERSHIP AND SUPPORTIVE SERVICES [Notice PIH 2020-01]

PHAs are encouraged but not required to establish formal and informal partnerships with a variety of organizations that assist persons with disabilities to help ensure eligible participants find and maintain stable housing.

PHA Policy

The PHA will implement a Mainstream program, in partnership with:

Alpha One

AMISTAD

Avesta Housing

Catholic Charities

Community Housing of Maine (CHOM)

City of Portland Social Services Division

Frannie Peabody Center

The Maine Long-Term Care Ombudsman Program (LTCOP)

Milestone Recovery

The Office of Aging and Disability Services (OADS)

Pine Tree Legal Assistance, Inc.

Preble Street

Shalom House

STRIVE

19-IV.D. WAITING LIST ADMINISTRATION

General Waiting List Requirements [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

PHAs must not have a separate waiting list for Mainstream voucher assistance since the PHA is required by the regulations to maintain one waiting list for tenant-based assistance [24 CFR 982.204(f)]. All PHA policies on opening, closing, and updating the waiting list, as well as waiting list preferences in Chapter 4, apply to the Mainstream program.

When the PHA is awarded Mainstream vouchers, these vouchers must be used for new admissions to the PHA's program from the waiting list. The PHA must lease these vouchers by pulling the first Mainstream-eligible family from its tenant-based waiting list. PHAs are not permitted to reassign existing participants to the program in order to make regular tenant-based vouchers available. Further, the PHA may not skip over Mainstream-eligible families on the waiting list because the PHA is serving the required number of Mainstream families.

Upon turnover, vouchers must be provided to Mainstream-eligible families. If a Mainstream turnover voucher becomes available, the PHA must determine if the families at the top of the waiting list qualify under program requirements.

Admission Preferences [Notice PIH 2020-01; FY17 Mainstream NOFA; FY19 Mainstream NOFA]

If the PHA claimed points for a preference in a NOFA application for Mainstream vouchers, the PHA must adopt a preference for at least one of the targeted groups identified in the NOFA.

PHA Policy

The PHA claimed a preference for a targeted group as part of an application for Mainstream vouchers under a NOFA. The PHA will offer the following preference:

The PHA will offer a preference to 35 families who are transitioning out of institutional or other segregated settings at serious risk of institutionalization, homeless, or at risk of becoming homeless. After the initial quota has been met, the PHA may continue to offer this preference.

The PHA may offer a preference to First Place graduates. Preble Street's Transitional Living Program, First Place, is a program for youth ages 16-24 years who are who currently experiencing homelessness or at risk of experiencing homelessness. This program seeks to provide intensive supportive services and case management, while ensuring youth have a safe housing environment in which Preble Street is the leaseholder. Throughout the duration of this 12-18-month program, youth will have the opportunity to develop a Plan of Care outlining their vision and goals for themselves, which will be supported by their caseworker. This project utilizes a low-barrier Housing First approach with no preconditions regarding income, work, sobriety, or other factors required for program eligibility. After completing First Place, the participant is eligible for a Housing Choice Voucher to utilize in their current apartment, when possible, ("transition-in-place") or within a new unit. The participant can also choose to access Aftercare services for a year following graduation.

19-IV.E. PORTABILITY [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

Mainstream voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant.
 - If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
 - If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at the initial PHA will be freed up to lease to another Mainstream-eligible family.
- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

19-IV.F. PROJECT-BASING MAINSTREAM VOUCHERS [FY19 Mainstream Voucher NOFA Q&A]

The PHA may project-base Mainstream vouchers in accordance with all applicable PBV regulations and PHA policies in Chapter 17. PHAs are responsible for ensuring that, in addition to complying with project-based voucher program requirements, the project complies with all applicable federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, Section 504 of the Rehabilitation Act (Section 504), Titles II or III of the Americans with Disabilities (ADA), and the Fair Housing Act and their implementing regulations at 24 CFR Part 8; 28 CFR Parts 35 and 36; and 24 CFR Part 100. Mainstream vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

PART IV: NON-ELDERLY DISABLED (NED) VOUCHERS

19-V.A. PROGRAM OVERVIEW [Notice PIH 2013-19]

NED vouchers help non-elderly disabled families lease suitable, accessible, and affordable housing in the private market. Aside from separate funding appropriations and serving a specific population, NED vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a NED voucher differently from other applicants and participants.

Some NED vouchers are awarded to PHAs through competitive NOFAs. The NOFA for FY2009 Rental Assistance for NED made incremental funding available for two categories of NED families:

- **Category 1** vouchers enable non-elderly persons or families with disabilities to access affordable housing on the private market.
- **Category 2** vouchers enable non-elderly persons with disabilities currently residing in nursing homes or other healthcare institutions to transition into the community. PHAs with NED Category 2 vouchers were required to partner with a state Medicaid or health agency or the state Money Follows the Person (MFP) Demonstration agency.

Since 1997, HCVs for NED families have been also awarded under various special purpose HCV programs: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing), Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments (Certain Developments), One-Year Mainstream Housing Opportunities for Persons with Disabilities, and the Project Access Pilot Program (formerly Access Housing 2000).

- **Designated Housing** vouchers enable non-elderly disabled families, who would have been eligible for a public housing unit if occupancy of the unit or entire project had not been restricted to elderly families only through an approved Designated Housing Plan, to receive rental assistance. These vouchers may also assist non-elderly disabled families living in a designated unit/project/building to move from that project if they so choose. The family does not have to be listed on the PHA's voucher waiting list. Instead, they may be admitted to the program as a special admission. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.

- **Certain Developments** vouchers enable non-elderly families having a person with disabilities, who do not currently receive housing assistance in certain developments where owners establish preferences for, or restrict occupancy to, elderly families, to obtain affordable housing. These non-elderly families with a disabled person do not need to be listed on the PHA’s HCV waiting list in order to be offered and receive housing choice voucher rental assistance. It is sufficient that these families' names are on the waiting list for a covered development at the time their names are provided to the PHA by the owner. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA’s HCV waiting list.
- **One-Year Mainstream Housing Opportunities for Persons with Disabilities (One-Year Mainstream)** vouchers enable non-elderly disabled families on the PHA’s waiting list to receive a voucher. After initial leasing, turnover vouchers must be issued to non-elderly disabled families from the PHA’s voucher waiting list.

19-V.B. ELIGIBLE POPULATION

General Requirements [Notice PIH 2013-19]

Only eligible families whose head of household, spouse, or cohead is non-elderly (under age 62) and disabled may receive a NED voucher. Families with only a minor child with a disability are not eligible.

In cases where the qualifying household member now qualifies as elderly due to the passage of time since the family received the NED voucher, existing NED participant families do not “age out,” as the family was eligible on the day it was first assisted under a housing assistance payments (HAP) contract.

The definition of person with disabilities for purposes of NED vouchers is the statutory definition under Section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

The PHA may not implement eligibility screening criteria for NED vouchers that is different from that of the regular HCV program.

NED Category 2 [Notice PIH 2013-19 and NED Category 2 FAQs]

In addition to being eligible for the PHA’s regular HCV program and a non-elderly person with a disability, in order to receive a Category 2 voucher, the family’s head, spouse, cohead, or sole member must be transitioning from a nursing home or other healthcare institution and provided services needed to live independently in the community.

Nursing homes or other healthcare institutions may include intermediate care facilities and specialized institutions that care for those with intellectual disabilities, developmentally disabled, or mentally ill, but do not include board and care facilities (e.g., adult homes, adult day care, adult congregate living).

The PHA cannot limit who can apply to just those persons referred or approved by a Money Follows the Person (MFP) Demonstration agency or state health agency. Other individuals could be placed on the waiting list if they can show, with confirmation by an independent agency or organization that routinely provides such services (this can be the MFP or partnering agency, but need not be), that the transitioning individual will be provided with all necessary services, including care or case management.

For each Category 2 family, there must be documentation (e.g., a copy of a referral letter from the partnering or referring agency) in the tenant file identifying the institution where the family lived at the time of voucher issuance.

19-V.C. WAITING LIST

General Requirements [Notice PIH 2013-19]

Families must be selected for NED vouchers from the PHA's waiting list in accordance with all applicable regulations and PHA policies in Chapter 4.

Regardless of the number of NED families the PHA is required to serve, the next family on the waiting list must be served. Further, the PHA may not skip over NED-eligible families on the waiting list because the PHA is serving the required number of NED families.

NED Category 2 Referrals [NED Category 2 FAQs]

For NED Category 2 families, the partnering agency may make referrals of eligible families to the PHA for placement on the waiting list. The PHA will then select these families from the waiting list for voucher issuance. Because language in the NOFA established that vouchers awarded under the NOFA must only serve non-elderly disabled families transitioning from institutions, the PHA does not need to establish a preference in order to serve these families ahead of other families on the PHA's waiting list.

PHAs must accept applications from people living outside their jurisdictions or from people being referred from other Medicaid or MFP service agencies in their state.

If the PHA's waiting list is closed, the PHA must reopen its waiting list to accept referrals from its partnering agency. When opening the waiting list, PHAs must advertise in accordance with 24 CFR 982.206 and PHA policies in Section 4-II.C. In addition, the PHA must ensure that individuals living in eligible institutions are aware when the PHA opens its waiting list by reaching out to social service agencies, nursing homes, intermediate care facilities and specialized institutions in the local service area.

Reissuance of Turnover Vouchers [Notice PIH 2013-19]

All NED turnover vouchers must be reissued to the next NED family on the PHA's waiting list with the following exception: A Category 2 voucher must be issued to another Category 2 family upon turnover if a Category 2 family is on the PHA's waiting list. If there are no Category 2 families on the PHA's waiting list, the PHA must contact its partnering agency as well as conduct outreach through appropriate social service agencies and qualifying institutions to identify potentially eligible individuals. Only after all means of outreach have been taken to reach Category 2 families can the PHA reissue the voucher to another Category 2 NED family on the PHA's waiting list. Any subsequent turnover of that voucher must again be used for a Category 2 family on the PHA's waiting list, and the PHA is under the same obligation to conduct outreach to Category 2 families if no such families are on the PHA's waiting list.

For PHAs that received both Category 1 and Category 2 vouchers, if at any time the PHA is serving fewer Category 2 families than the number of Category 2 HCVs awarded under the NOFA, when a Category 2 family applies to the waiting list and is found eligible, the PHA must issue the next NED voucher to that family. HUD monitors the initial leasing and reissuance of Category 2 HCVs. These vouchers may be recaptured and reassigned if not leased properly and in a timely manner.

All NED vouchers should be affirmatively marketed to a diverse population of NED-eligible families to attract protected classes least likely to apply. If at any time following the turnover of a NED HCV a PHA believes it is not practicable to assist NED families, the PHA must contact HUD.

19-V.D. LEASE UP [Notice PIH 2013-19]

Briefings

In addition to providing families with a disabled person a list of accessible units known to the PHA, HUD encourages, but does not require, PHAs to provide additional resources to NED families as part of the briefing.

PHA Policy

In addition to providing families with a disabled person a list of accessible units known to the PHA, the PHA will provide a list of local supportive service and disability organizations that may provide such assistance as counseling services and funding for moving expenses or security deposits in the briefing packet. These organizations include state protection and advocacy agencies, Centers for Independent Living, state Medicaid agencies, and disability advocacy groups that represent individuals with a variety of disabilities.

Further, if other governmental or non-governmental agencies provide available resources such as housing search counseling, moving expenses, security deposits, and utility deposits, the PHA will include this information in the briefing packet.

The PHA will also offer specialized housing search assistance to families with a disabled person to locate accessible units if requested. Trained PHA staff or a local supportive service or disability organization may be able to provide this service.

Voucher Term

While the PHA is not required to establish different policies for the initial term of the voucher for NED vouchers, HUD has encouraged PHAs with NED vouchers to be generous in establishing reasonable initial search terms and subsequent extensions for families with a disabled person.

PHA Policy

All NED vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

All other PHA policies on extensions and suspension of vouchers in Section 5-II.E. will apply.

Special Housing Types [Notice PIH 2013-19 and NED Category 2 FAQs]

In general, a PHA is not required to permit families to use any of the special housing types and may limit the number of families using such housing. However, the PHA must permit the use of a special housing type if doing so provides a reasonable accommodation so that the program is readily accessible to and usable by a person with disabilities.

Such special housing types include single room occupancy housing, congregate housing, group homes, shared housing, cooperative housing, and manufactured homes when the family owns the home and leases the manufactured home space.

Persons with disabilities transitioning out of institutional settings may choose housing in the community that is in a group or shared environment or where some additional assistance for daily living is provided for them on site. Under HUD regulations, group homes and shared housing are considered special housing types and are not excluded as an eligible housing type in the HCV program. Assisted living facilities are also considered eligible housing under the normal HCV program rules, as long as the costs for meals and other supportive services are not included in the housing assistance payments (HAP) made by the PHA to the owner, and as long as the person does not need continual medical or nursing care.

19-V.E. PORTABILITY [NED Category 2 FAQs]

NED voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to NED families. However, the PHA may, but is not required to, allow applicant NED families to move under portability, even if the family did not have legal residency in the initial PHA's jurisdiction when they applied.

PHA Policy

If neither the head of household nor the spouse or cohead of a NED applicant family had a domicile (legal residence) in the PHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking.

PART VI: STABILITY VOUCHER PROGRAM

19-VI.A. PROGRAM OVERVIEW [Notice PIH 2022-24]

The Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Act) provided new incremental funding for voucher assistance through Stability Vouchers (SVs) for households who are:

- Homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a));
- At-risk of homelessness;
- Those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, or human trafficking; and
- Veterans and families that include a veteran family member that meet one of the above criteria.

HUD may waive certain statutory and regulatory provisions to administer the SVs (except for requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards and the environment) upon a finding that any such waivers or alternative requirements are necessary to facilitate the use of funds made available for SVs. Unless expressly waived below, all statutory and regulatory requirements and HUD directives regarding the HCV program are applicable to SVs, including the use of all HUD required contracts and other forms. A PHA may request additional good cause regulatory waivers as established in Notice PIH 2018-16 in connection with the use of the SVs, which HUD will consider and assess upon the request of the PHA.

19-VI.B. PARTNERING ORGANIZATION [Notice PIH 2022-24]

SV funding is only awarded to PHAs that partner with eligible Continuums of Care (CoCs) or other entities that serve the targeted population, such as Victim Service Providers (VSPs) and Veteran Service Organizations (VSOs) serving the targeted population in the PHA's jurisdiction to implement coordinated approaches to reduce the prevalence of homelessness, improve service engagement, and promote housing stability while ensuring geographical need of assistance.

The PHA must enter into a Memorandum of Understanding (MOU) with the CoC to establish a partnership with the CoC to pair SVs with CoC-funded supportive services, and to collaborate with the CoC and other stakeholders to develop a prioritization plan for these vouchers.

PHA Policy

The PHA has entered into an MOU with the following partnering organization *[insert names of CoC, VSP, and/or VSO]*. See Exhibit 19-3 for a copy of the MOU.

19-VI.C. REFERRALS [Notice PIH 2022-24]

In general, families are issued SVs as the result of either:

- The direct referral process from the CoC or other partnering organizations; or
- A situation where the PHA makes an SV available in order to facilitate an emergency transfer for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking.

CoC Referrals

The primary responsibility of the CoC under the MOU is to make direct referrals of qualifying individuals and families to the PHA and to identify any CoC-funded available supportive services that may be paired with SVs.

The CoC or other partnering agency must certify that the SV applicants they refer to the PHA meet the definition of a qualifying individual or family for SV assistance.

The referring agency must provide documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for SV assistance. The PHA must retain this documentation as part of the family's file.

PHA Policy

The CoC or partnering agency must establish and implement a system to identify SV-eligible individuals and families within the agency's caseload and make referrals to the PHA.

The CoC or other partnering agency must certify that the SV applicants they refer to the PHA meet SV eligibility criteria. The PHA will maintain a copy of the referral or certification from the CoC or other partnering agency in the participant's file along with other eligibility paperwork. Homeless service providers may, but are not required to, use the certification form found in Exhibit 19-1 of this chapter. Victim services providers may, but are not required to, use the certification form found in Exhibit 19-2 of this chapter when identifying eligible families who qualify as victims of human trafficking.

As part of the MOU, the PHA and CoC or other partnering agency will identify staff positions to serve as lead SV liaisons. These positions will be responsible for transmission and acceptance of referrals. The CoC or partnering agency must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

The PHA liaison responsible for acceptance of referrals will contact the CoC or partnering agency liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than five business days from the date the CoC or partnering agency receives this notification, the CoC or partnering agency liaison will provide the PHA with a list of eligible referrals including the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating they are SV-eligible.

Referrals from Outside the CoC

The PHA must also take direct referrals from outside the CoC process if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or
- The CoC does not identify families that may be eligible for SV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking.

If a direct referral is taken from outside of the CoC, the PHA must enter into a partnership to receive direct referrals from another entity, assuming there are such additional organizations that can certify that an individual or family is eligible for an SV.

The PHA must enter into an MOU with a partnering referral agency or may add the partnering referral agency to the MOU between the PHA and CoC.

19-VI.D. WAITING LIST [Notice PIH 2022-24]

HCV Waiting List

The regulation that requires the PHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the SV program. Direct referrals are not added to the PHA's HCV waiting list.

The PHA must inform families on the HCV waiting list of the availability of SVs by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2022-24.

PHA Policy

The PHA will post information about the SV program for families on the PHA's HCV waiting list on their website. The notice will:

Describe the eligible populations to which SVs are limited.

Clearly state that the availability of these SVs is managed through a direct referral process.

Advise the family to contact the CoC (or any other PHA referral partner, if applicable) if the family believes they may be eligible for SV assistance.

The PHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. The PHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

SV Waiting List

The HCV regulations requiring the PHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the SV program. Instead, when the number of applicants referred by the CoC or partnering agency exceeds the SVs available, the PHA must maintain a separate waiting list for SV referrals. Upon turnover, SV vouchers must continue to remain available for eligible families.

Further, the SV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. The PHA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the SV waiting list.

HCV Waiting List Preferences

If local preferences are established by the PHA for HCV in Chapter 4, they do not apply to SVs. However, if the PHA has a homelessness preference or a preference for survivors of domestic violence, dating violence, sexual assault, stalking, or human trafficking for the regular HCV program, the PHA must refer any applicant on the waiting list that indicated they qualified for this preference to the CoC, or the applicable partnering referral agency.

PHA Policy

The PHA does not offer either a homelessness or VAWA preference for the HCV waiting list.

SV Waiting List Preferences

With the exception of a residency preference, which may not be applied to the PHA's SV waiting list, the PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for SVs, or may simply choose to not establish any local preferences for the SV waiting list. The preference system may not prohibit SV admissions from any of the four qualifying categories of eligibility.

PHA Policy

No local preferences have been established for the SV waiting list.

19-VI.E. FAMILY ELIGIBILITY [Notice PIH 2022-24]

Referring Agency Determination of Eligibility

The CoC or referring agency determines whether the individual or family meets any one of the eligibility criteria described in Notice PIH 2022-24 and then refers the family to the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the SV program and outlined below.

In order to be eligible for an SV, a household must meet one of four eligibility criteria:

- Homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302(a)) and 24 CFR 578.3;
- At-risk of homelessness as defined in 24 CFR 5.78.3;
- Those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, or human trafficking; and
- Veterans [as defined in 38 U.S.C. 101(2); 38 CFR 3.1(d)] and families that include a veteran family member that meet one of the above criteria.

Mandatory Denials

HUD waived 24 CFR 982.552 and 982.553 in part for the SV applicants and established alternative requirements for mandatory and permissive prohibitions of admissions. Except where applicable, PHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an SV. Instead, the SV alternative requirement listed in this section will apply to all SV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2022-24 and in this chapter, however, apply only when screening the individual or family for eligibility for an SV. When adding a family member after the family has been placed under a HAP contract with SV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

Under alternative requirements for the SV program, mandatory denials for SV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.

The PHA will also deny assistance to household members already receiving assistance from another program.

The PHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited SV grounds for denial of admission first.

PHA Policy

While the PHA will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, the PHA will first notify the family of the limited SV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

Permissive Denial

Notice PIH 2022-24 lists permissive prohibitions for which the PHA may, but is not required to, deny admission to SV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for SV families.

If the PHA intends to establish permissive prohibition policies for SV applicants, the PHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

PHA Policy

In consultation with the CoC, the PHA will apply permissive prohibition to the screening of SV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E. of the administrative plan.

The PHA will establish the following permissive prohibitions:

If the PHA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:

Violent criminal activity

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

If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program within the previous 12 months.

If the family engaged in or threatened abusive or violent behavior toward PHA personnel within the previous 12 months.

Prohibitions based on criminal activity for the eligible SV populations regarding drug possession will be considered apart from criminal activity against persons (i.e., violent criminal activity).

In compliance with PIH 2022-24, the PHA **will not** deny an SV applicant admission regardless of whether:

Any member of the family has been evicted from federally assisted housing in the last five years

A PHA has ever terminated assistance under the program for any member of the family

The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act

The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease

The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA

The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with 24 CFR 982.553(a)(3)

The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity

Self-Certification of Income at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the SV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to SV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

PHA Policy

Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.

The PHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. The PHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the PHA will terminate the family's assistance in accordance with the policies in Chapter 12.

Recently Conducted Income Determinations

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:

- The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

PHA Policy

The PHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to the PHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination, the PHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and the PHA policies in Chapter 11.

EIV Income Validation

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

Social Security Number and Citizenship Status Verification

For the SV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the SV program. Instead, PHAs may adopt policies to admit SV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

PHA Policy

The PHA will admit SV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. The PHA may provide an additional 60-day extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

Age and Disability Verifications

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, the PHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

PHA Policy

The PHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, the PHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. The PHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

Income Targeting

The PHA must determine income eligibility for SV families in accordance with 24 CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for SV families. The PHA may still choose to include the admission of extremely low-income SV families in its income targeting numbers for the fiscal year in which these families are admitted.

PHA Policy

The PHA will not include the admission of extremely low-income SV families in its income targeting numbers for the fiscal year in which these families are admitted.

19-VI.F. HOUSING SEARCH AND LEASING

Initial Voucher Term

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, SV vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

PHA Policy

All SVs will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

Pre-Inspections

To expedite the leasing process, PHAs may pre-inspect available units that SV families may be interested in leasing in order to maintain a pool of eligible units.

PHA Policy

To expedite the leasing process, the PHA may pre-inspect available units that SV families may be interested in leasing to maintain a pool of eligible units. If an SV family selects a unit that passed a pre-inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The family will be free to select his or her unit.

When a pre-inspected unit is not selected, the PHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for any required reinspections.

Initial Lease Term

Unlike in the standard the HCV program, SV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

Portability

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to SVs. Exceptions are addressed below.

- Under SV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of PHA policy in Section 10-II.B.
- A receiving PHA cannot refuse to assist an incoming SV family, regardless of whether the PHA administers SVs under its own ACC.
- If the SV family moves under portability to another PHA that administers SVs under its own ACC:
 - The receiving PHA may only absorb the incoming SV family with an SV (assuming it has an SV voucher available to do so).
 - If the PHA does not have an SV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with SV assistance and may not absorb the family with a regular HCV when the family leases the unit.
 - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's SV assistance, the SV administration of the voucher is in accordance with the receiving PHA's SV policies.
- If the SV family moves under portability to another PHA that does not administer SVs under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

Family Briefing

In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family's assistance, the initial PHA must inform the family how portability may impact the special SV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

PHA Policy

In addition to following PHA policy on briefings in Chapter 5, as part of the briefing packet for SV families, the PHA will include a written notice that the PHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, the PHA will provide interpretation services in accordance with the PHA's LEP plan (See Chapter 2).

19-VI.G. PAYMENT STANDARDS

Overview

For the SV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for SVs. Lower SV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must also increase the SV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate SV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if the PHA chooses to establish higher payments standards for SVs, HUD has provided other regulatory waivers:

- Defining the “basic range” for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).
- Allowing a PHA that is not in a designated Small Area FMR (SAFMR) area or has not opted to voluntarily implement SAFMRs to establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD-published SAFMRs. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.

PHA Policy

The PHA will not establish a higher payment standard amount for SVs. The PHA will use the same payment standards for HCV and SV.

All rent reasonableness requirements apply to SV units, regardless of whether the PHA has established an alternative or exception SV payment standard.

Increases in Payment Standards

The requirement that the PHA apply increased payment standards at the family’s first regular recertification on or after the effective date of the increase does not apply to SV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family’s first regular reexamination following the change.

PHA Policy

The PHA will not establish an alternative policy for increases in the payment standard. PHA policy in Section 11-III.B. governing increases in payment standards will apply to SVs.

19-VI.H. PROJECT-BASED UNITS

All tenant-based SV awards can be converted to Project-Based Vouchers (PBV) at any time after award without HUD approval provided all the established PBV regulations and requirements are followed.

All PBV requirements in 24 CFR Part 983 and in Chapter 17 apply to project-based SVs with the exception of 24 CFR 983.251(c)(1), which requires PHAs to select families for project-based units from its HCV or PBV waiting list. HUD is waiving this requirement and establishing an alternative requirement that PHAs receive SV referrals from CoC partners for vouchers as well as project-based assistance.

**EXHIBIT 19-1: SAMPLE STABILITY VOUCHER (SV)
HOMELESS PROVIDER'S CERTIFICATION**

**Stability Voucher (SV)
HOMELESS CERTIFICATION**

SV Applicant Name: _____

Household without dependent children (complete one form for each adult in the household)

Household with dependent children (complete one form for household)

Number of persons in the household: _____

This is to certify that the above named individual or household meets the following criteria based on the check mark, other indicated information, and signature indicating their current living situation

Check only one box and complete only that section

Living Situation: place not meant for human habitation (e.g., cars, parks, abandoned buildings, streets/sidewalks)

The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus station, airport, or campground.

Description of current living situation:

Homeless Street Outreach Program Name: _____

This certifying agency must be recognized by the local Continuum of Care (CoC) as an agency that has a program designed to serve persons living on the street or other places not meant for human habitation. Examples may be street outreach workers, day shelters, soup kitchens, Health Care for the Homeless sites, etc.

Authorized Agency Representative Signature: _____

Date: _____

Living Situation: Emergency Shelter

- The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a supervised publicly or privately operated shelter as follows:

Emergency Shelter Program Name: _____

This emergency shelter must appear on the CoC’s Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to the U.S. Department of Housing and Urban Development (HUD) or otherwise be recognized by the CoC as part of the CoC inventory (e.g., newly established Emergency Shelter).

Authorized Agency Representative Signature: _____

Date: _____

Living Situation: Recently Homeless

- The person(s) named above is/are currently receiving financial and supportive services for persons who are homeless. Loss of such assistance would result in a return to homelessness (e.g., households in rapid rehousing programs, residents of permanent supportive housing programs participating in Moving On, etc.)

Authorized Agency Representative Signature: _____

Date: _____

This referring agency must appear on the CoC’s Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to HUD or otherwise be recognized by the CoC as part of the CoC inventory.

Immediately prior to entering the household’s current living situation, the person(s) named above was/were residing in:

- Emergency shelter OR A place unfit for human habitation

Authorized Agency Representative Signature: _____

Date: _____

EXHIBIT 19-2: SAMPLE VICTIM SERVICE PROVIDER'S CERTIFICATION

Stability Voucher (SV)

SAMPLE CERTIFICATION FOR SURVIVORS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND/OR HUMAN TRAFFICKING

Use of this Optional Form:

Service providers may utilize this form to certify a family's eligibility for SV to document households who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, and/or human trafficking. In response to this request, the service provider may complete this form and submit it to the Public Housing Agency (PHA) to certify eligibility for the U.S. Department of Housing and Urban Development's (HUD) Stability Voucher program.

Confidentiality:

All information provided during the referral process concerning the incident(s) of domestic violence, dating violence, dating violence, sexual assault, stalking, and human trafficking shall be kept confidential and such details shall not be entered into any shared database. Employees of the PHA will not have access to these details, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED ON BEHALF OF SURVIVORS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND/OR HUMAN TRAFFICKING

SV Applicant Name: _____

The applicant named above is a survivor of (please check from the list all that apply):

- Domestic Violence
- Dating Violence
- Sexual Assault
- Stalking
- Human Trafficking

This certifies that the above named individual or household meets the definition for persons who are fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking and/or human trafficking as these terms are defined under 34 U.S.C. Section 12291 of the Violence Against Women Act¹ and 22 U.S.C. Section 7102(11) of the Trafficking Victims Protection Act.²

I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Authorized Agency Representative Signature: _____

Date: _____

¹ The Violence Against Women Act protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

² The Victims of Trafficking and Violence Protection Act of 2000 provides assistance to victims of trafficking making housing, educational health care, job training and other federally-funded social service programs available to assist victims in rebuilding their lives.

EXHIBIT 19-3: SAMPLE SV MEMORANDUM OF UNDERSTANDING³

[** This sample document demonstrates the Memorandum of Understanding requirements for the administration of Stability Vouchers. Unless otherwise noted, all elements are required. **]

Memorandum of Understanding – Stability Vouchers

This Memorandum of Understanding (MOU) has been created and entered on [Insert execution date] by [insert PHA name and address] and [insert CoC/VSP name and address].

I. Introduction and Goals

The [insert PHA name] and [insert CoC/VSP name] through the Stability Voucher (SV) Program seek to prevent and end homelessness among individuals and families who are experiencing or at-risk of homelessness, those fleeing or attempting to flee domestic violence dating violence, sexual assault, stalking, and human trafficking, and veterans and families that include a veteran family member that meets one of the proceeding criteria.

The Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Act), makes available \$43,343,000 for new incremental voucher assistance under Section 8(o) of the United States Housing Act of 1937 for use by individuals and families experiencing or at-risk of homelessness; those fleeing or attempting to flee domestic violence, dating violence, sexual assault, and stalking; and veterans and families that include a veteran family member that meets one of the proceeding criteria.

The Further Consolidated Appropriations Act, 2022 (Public Law 117-103 (2022 Act) further provides that HUD may waive certain statutory and regulatory provisions to administer the SVs (except for requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards and the environment) upon a finding that any such waivers or alternative requirements are necessary to facilitate the use of funds made available for SVs.

This Memorandum of Understanding (MOU) outlines the collaboration and commitment between [insert PHA name] and [insert CoC/VSP name] to pair Stability Vouchers with CoC-funded supportive services; and to collaborate with the CoC/VSP and other stakeholders to develop a prioritization plan for these vouchers.

Lead Agency Liaisons:

Name and title of PHA staff position:

Name and title CoC and/or VSP staff position:

³ If PHA policy in Section 19-VI.B. of this administrative plan states that a copy of the MOU will be attached at the end of this chapter as Exhibit 19-3, you may either fill in the language shown here or replace the text with the PHA's own MOU, then delete the word *sample*. If the PHA does not wish to attach its own MOU to the chapter, this statement should be removed from the policy in Section 19-VI.B.

II. Individuals and Families Eligibility under the Qualifying Categories

In order to be eligible for an SV, an individual or family must meet one of four eligibility categories:

- Homeless
- At risk of homelessness
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking
- Veterans

III. SV Roles and Responsibilities

A. PHA Roles and Responsibilities [**The following responsibilities are listed for example purposes. **]

1. Coordinate and consult with the CoC in developing the services and assistance to be offered under the SV services fee.
2. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry System.
3. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner.
4. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner.
5. Designate a staff to serve as the lead SV liaison.
6. Comply with the provisions of this MOU.

B. CoC Roles and Responsibilities [**The following responsibilities are listed for example purposes. **]

1. Designate and maintain a lead SV liaison to communicate with the PHA.
2. Refer eligible individuals and families to PHA using the community's coordinated entry system.
3. Support eligible individuals and households in completing and applying for supportive documentation to accompany admissions application to the PHA (i.e., self-certifications, birth certificate, social security card, etc.).
4. Attend SV participant briefings when needed.

5. Assess all households referred for SV for mainstream benefits and supportive services available to support eligible individuals and families through their transition.
6. Identify and provide supportive services to SV families. (While SV participants are not required to participate in services, the CoC should assure that services are available and accessible.)
7. Comply with the provisions of this MOU.

IV. CoC-funded supportive services that will be paired with SVs

CoCs are encouraged to outline any existing partnerships with health and behavioral health care providers and agencies, state Medicaid agencies and agencies and organizations that may be leveraged to provide ongoing tenancy and wrap-around supportive services for those that may benefit from such services to maintain housing stability. All services provided by the CoC must be outlined in the MOU with the CoC and should demonstrate the community's strategy to coordinate assistance through available resources. HUD recommends that PHAs and partnering CoCs seek a diverse range of supportive services by partnering with organizations trusted by people experiencing homelessness.

V. PHA Adopted Waivers and Alternative Requirements

Notice PIH 2022-24 provides **[insert PHA name]** with authority to adopt certain statutory and regulatory requirements and alternative requirements for Stability Vouchers. **[insert PHA name]** and **[insert CoC/VSP name]** have agreed to adopt the following waivers and alternative requirements:

[List all waivers and alternative requirements discussed, agreed upon by the PHA and CoC for the administration of SVs]

VI. PHA Permissive Prohibition Policies agreed upon by the PHA and CoC

[Insert PHA name] in consultation with **[insert CoC/VSP name]** have agreed to adopt the following permissive prohibitions for the Stability Voucher program:

[List any permissive prohibition policies agreed upon by the PHA and CoC]

VII. Program Evaluation

[Insert PHA name] and [insert CoC /VSP] agree to cooperate with HUD, provide requested data to HUD or HUD-approved contractor delegated the responsibility of program evaluation protocols established by HUD or HUD-approved contractor.

Signed By:

Public Housing Agency Executive Director

Date

CoC/VSP Executive Director

Date

GLOSSARY

A. ACRONYMS USED IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

ACC	Annual contributions contract
ADA	Americans with Disabilities Act of 1990
AIDS	Acquired immune deficiency syndrome
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
EIV	Enterprise Income Verification
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration (HUD Office of Housing)
FHEO	Fair Housing and Equal Opportunity (HUD Office of)
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent
HA	Housing authority or housing agency
HAP	Housing assistance payment
HCV	Housing choice voucher
HIP	Housing Information Portal
HOTMA	Housing Opportunity through Modernization Act of 2016
HQS	Housing quality standards
HUD	Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy System

IPA	Independent public accountant
IRA	Individual retirement account
IRS	Internal Revenue Service
IVT	Income Validation Tool
JTPA	Job Training Partnership Act
LBP	Lead-based paint
LEP	Limited English proficiency
MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTW	Moving to Work
NOFA	Notice of funding availability
NSPIRE	National Standards for the Physical Inspection of Real Estate
OGC	HUD's Office of General Counsel
OIG	HUD's Office of Inspector General
OMB	Office of Management and Budget
PASS	Plan to Achieve Self-Support
PBV	Project-based voucher
PHA	Public housing agency
PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
RAD	Rental Assistance Demonstration Program
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
RVI	Remote Video Inspection
SEMAP	Section 8 Management Assessment Program
SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
SWICA	State wage information collection agency

TANF	Temporary assistance for needy families
TPV	Tenant protection vouchers
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
UFAS	Uniform Federal Accessibility Standards
UIV	Upfront income verification
URP	Utility reimbursement payment
VAWA	Violence Against Women Act
VCA	Voluntary Compliance Agreement
VMS	Voucher Management System

B. GLOSSARY OF SUBSIDIZED HOUSING TERMS

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

Accessible. The facility or portion of the facility can be approached, entered, and used by persons with disabilities.

Adjusted income. Annual income, less allowable HUD deductions and allowances.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See §982.152.

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

Admission. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

Affiliated individual. With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual

Amortization payment. In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

Annual. Happening once a year.

Annual contributions contract (ACC). The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

Annual income. All amounts not specifically excluded in 24 CFR 5.609(b), received from all sources by each member of the family who is 18 years of age or older or is the head of household, spouse or cohead, plus unearned income by or on behalf of each dependent who is under 18 years of age.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Area exception rent. An amount that exceeds the published FMR. See 24 CFR 982.504(b).

As-paid states. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

Assets. (See *net family assets.*)

Auxiliary aids. Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

Biennial. Happening every two years.

Bifurcate. With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

Budget authority. An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

Child. A member of the family other than the family head or spouse who is under 18 years of age.

Child care expenses. Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further their education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for 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.

Citizen. A citizen or national of the United States.

Cohead. An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter into a lease.

Common space. In shared housing, the space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of databases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of a PHA.

Consent form. Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.

Contiguous MSA. In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

Continuously assisted. An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

Contract authority. The maximum annual payment by HUD to a PHA for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).

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

Day laborer. An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

De minimis error. An error that results in a difference in the determination of a family's adjusted income of \$30 or less per month.

Dependent. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

Dependent child. In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

Disability assistance expenses. Reasonable expenses that, when combined with health and medical care expenses, exceed 10 percent of annual income and are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Disabled family. A family whose head, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Disabled person. See *person with disabilities*.

Disallowance. Exclusion from annual income.

Displaced family. A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.

Domestic violence. Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:

- The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
- A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
- A person with whom the victim shares a child in common
- A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction

Domicile. The legal residence of the household head or spouse as determined in accordance with state and local law.

Drug-related criminal activity. The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.

Earned income. Income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

Economic abuse. Behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:

- Restrict a person's access to money, assets, credit, or financial information
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty

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, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

Elderly person. An individual who is at least 62 years of age.

Eligible family A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR. See also *family*.

Employer identification number (EIN). The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

Evidence of citizenship or eligible status. The documents which must be submitted as evidence of citizenship or eligible immigration status. See 24 CFR 5.508(b).

Extremely low-income family. A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 24 CFR 5.603.

Fair Housing Act. Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Fair market rent (FMR). The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

Family. Includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, and can be further defined in PHA policy. Family includes a single person, who may be:

- An elderly person, displaced person, disabled person, near-elderly person, or any other single person;
- An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

Family also includes a group of persons residing together, and such group includes, but is not limited to:

- A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
- An elderly family;
- A near-elderly family;
- A disabled family;
- A displaced family; and
- The remaining member of a tenant family.

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family.

Family self-sufficiency program (FSS program). The program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the coordination of supportive services to these families (24 CFR 984.103).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Federal agency. A department of the executive branch of the federal government.

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

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

Foster child care payment. A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

Full-time student. A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). See 24 CFR 5.603.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

Gender identity. Actual or perceived gender-related characteristics.

Gross rent. The sum of the rent to owner plus any utility allowance.

Group home. A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)

Handicap. Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

HAP contract. The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Health and medical care expenses. Any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

Household. A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

Housing assistance payment. The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing agency (HA). See *public housing agency*.

HUD. The U.S. Department of Housing and Urban Development.

Human trafficking. A crime involving the exploitation of a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations recognize and define two primary forms of human trafficking:

- Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. See 22 U.S.C. § 7102(11)(A).
- Forced labor is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(11)(B).

Imputed 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 for eligibility. Annual income.

Income information means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages, and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

Independent contractor. An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

Individual with handicaps. See *person with disabilities*.

Inflationary index. An index based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) used to make annual adjustments to the deduction for elderly disabled families, the cap for imputing returns on assets, the restriction on net family assets, the amount of net assets the PHA may determine based on self-certification by the family, and the dependent deduction.

Initial PHA. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Inside. Under NSPIRE, the inside of HUD housing (or “inside areas”) refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of “inside” common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

Institution of higher education. An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

Jurisdiction. The area in which the PHA has authority under state and local law to administer the program.

Landlord. Either the owner of the property or their representative, or the managing agent or their representative, as shall be designated by the owner.

Lease. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Life Threatening deficiency. Under NSPIRE, the life-threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident.

Live-in aide. A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

Local preference. A preference used by the PHA to select among applicant families.

Low deficiency. Under NSPIRE, deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.

Low-income family. A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.

Manufactured home. A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. (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.

Minor. A member of the family household other than the family head or spouse, who is under 18 years of age.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Moderate deficiency. Under NSPIRE, this includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Mutual housing. Included in the definition of *cooperative*.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

National Standards for the Physical Inspection of Real Estate. HUD's housing inspection approach. NSPIRE is a single inspection standard for all units under the Public Housing, HCV, Multifamily, and Community Planning and Development (CPD) programs. NSPIRE's focus is on the areas that impact residents the most, such as the dwelling unit.

Near-elderly family. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

Net family assets. The net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment. In determining net family assets, PHAs or owners, as applicable, must include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

Noncitizen. A person who is neither a citizen nor national of the United States.

Notice of funding availability (NOFA). For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

Office of General Counsel (OGC). The General Counsel of HUD.

Outside. Under NSPIRE, outside of HUD housing (or “outside areas”) refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of “outside” components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows.

Overcrowded. A unit that does not have at least one bedroom or living/sleeping room for each two persons.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

PHA Plan. The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

PHA’s quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Person with disabilities. *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

Portability. Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit.

Public assistance. Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

Public housing agency (PHA). Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

Qualified census tract. With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

Real property. Real property has the same meaning as that provided under the law of the state in which the property is located.

Reasonable rent. A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

Reasonable accommodation. A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

Recertification. Sometimes 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.

Remaining member of the tenant family. The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

Rent to owner. The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

Residency preference. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Responsible entity. For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

Secretary. The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937.

Section 8 covered programs. All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended.

Section 214 covered programs. The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

Security deposit. A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

Seasonal worker. An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

Set-up charges. In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

Severe deficiency. Under NSPIRE, the severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.

Sexual assault. Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

Sexual orientation. Homosexuality, heterosexuality or bisexuality.

Shared housing. A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)

Single person. A person living alone or intending to live alone.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

Small rural public housing agency (PHA). Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

- (1) Has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or
- (2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

Social security number (SSN). The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person’s earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

Special admission. Admission of an applicant that is not on the PHA waiting list or without considering the applicant’s waiting list position.

Special housing types. See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

Specified welfare benefit reduction. Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Spouse. The marriage partner of the head of household.

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

State wage information collection agency (SWICA). The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

Subsidy standards. Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. The term on the family's voucher stops from the date the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.

Tax credit rent. With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Technological abuse. An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:

- Internet enabled devices
- Online spaces and platforms
- Computers
- Mobile devices
- Cameras and imaging programs
- Apps
- Location tracking devices
- Communication technologies
- Any other emergency technologies

Tenancy addendum. For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent to owner. See *family rent to owner*.

Term of lease. The amount of time a tenant agrees in writing to live in a dwelling unit.

Total tenant payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

Unearned income. Any annual income, as calculated under 24 CFR 5.609, that is not earned income.

Unit. Under NSPIRE, a unit (or "dwelling unit") of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.

Utilities. Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

Utility hook-up charge. In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

Very low-income family. A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

Veteran. A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

Violence Against Women Act (VAWA). Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

Violent criminal activity. Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

Voucher (housing choice voucher). A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher program. The housing choice voucher program.

Waiting list. A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

Waiting list admission. An admission from the PHA waiting list.

Welfare assistance. Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (24 CFR 984.103), *welfare assistance* includes only cash maintenance payments designed to meet a family's ongoing basic needs. Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as child care and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.

Order 238-22/23
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Effective 6/15/2023

KATE SNYDER (MAYOR)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
ROBERTO RODRÍGUEZ (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

ANNA TREVORROW (1)
VICTORIA L. PELLETIER (2)
REGINA L. PHILLIPS (3)
ANDREW ZARRO (4)
MARK DION (5)

**ORDER ACCEPTING THE CUMBERLAND COUNTY AND CITY OF PORTLAND
ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING**

ORDERED, that the Cumberland County and City of Portland Analysis of Impediments to Fair Housing, in the form substantially the same as attached hereto, is hereby accepted.



Root Policy Research

6740 E Colfax Ave, Denver, CO 80220

www.rootpolicy.com

970.880.1415

City of Portland and Cumberland County

Analysis of Impediments to Fair Housing Choice

PREPARED FOR:

City of Portland,
Housing & Community Development
Cumberland County,
Community Development

CREATED

03/20/2023

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SECTION I.

EXECUTIVE SUMMARY

Executive Summary: Portland and Cumberland County Analysis of Impediments to Fair Housing Choice.

In fall 2021, the City of Portland and Cumberland County initiated a study of fair housing choice in the city and county called an Analysis of Impediments to Fair Housing Choice (AI). The fair housing study was completed to fulfill a requirement by the U.S. Department of Housing and Urban Development (HUD) to “affirmatively further fair housing” or AFFH.

The study was a collaborative effort between the City of Portland and Cumberland County and covered the 27 jurisdictions that represent the Consortia receiving federal HOME Partnership Investment Funds (HOME) from HUD. The HOME Consortia jurisdictions include: Baldwin, Bridgton, Brunswick, Cape Elizabeth, Casco, Chebeague Island, Cumberland, Falmouth, Freeport, Gorham, Gray, Harpswell, Harrison, Long Island, Naples, New Gloucester, North Yarmouth, Portland, Pownal, Scarborough, Sebago, South Portland, Standish, Raymond, Westbrook, Windham, and Yarmouth, within Cumberland County.

This study was informed by local knowledge and data, and robust community engagement through a resident survey, focus groups, and interviews with local leaders and stakeholders who work in the housing and planning industries or provide services to low and moderate income residents—advocates, community groups, service providers, educators, housing providers, and developers. Engagement occurred throughout the development of the study.

Altogether, more than 750 residents and stakeholders in the county took part in the development of the AI. The residents who participated in the survey were 52% owners, 40% renters, and 8% precariously housed. They were part of families with children (28%), single parent households (24%), older adults (24%), persons with disabilities (30%). They included income-diverse households and represented the racial and ethnic distribution of the county.

This Executive Summary:

- Provides background on the study;
- Presents the primary findings from the research that supported the AI;
- Identifies fair housing issues in the City of Portland and Cumberland County and participating jurisdictions; and
- Concludes with an action plan to address the issues residents face in accessing housing and economic opportunity.

Data and Methodology

The primary data sources and local knowledge and information that were used to develop the AI include:

- The Census' American Community Survey (ACS) from 2010 and 2020 (5-year data);
- Local housing development and permitting data from the City of Portland Housing and Community Development Department;
- Affordable housing development data from the National Preservation Database;
- Characteristics of residents of publicly supported housing from HUD's AFFH data and mapping tool;
- Home Mortgage Disclosure Act data from mortgage transactions;
- A resident survey developed and fielded for this study; and
- Interviews and focus groups with stakeholders who work in the housing and planning industries or provider services to low and moderate income residents.

Background

The Federal Fair Housing Act of 1968 requires HUD to administer its programs and activities in a manner which “affirmatively furthers” the policies of the Federal Fair Housing Act (FHA)—also known as affirmatively furthering fair housing or AFFH. This obligation extends to all federal agencies that administer housing and urban development programs, as well as subrecipients of those funds—including cities, counties, and states. As such, the City of Portland and Cumberland County, as recipients of housing and community development block grant funds, must demonstrate their commitment to AFFH.

One of the ways that communities can AFFH is to conduct an analysis of issues negatively affecting fair housing choice, and develop an action plan to meaningfully address the effects of the legacy of public and private policies and practices that intentionally or unintentionally created inequities. That process is often referred to as an Assessment of Fair Housing, or Analysis of Impediments to Fair Housing Choice (AI), or, in a new rule to update AFFH, an Equity Plan.

This study accomplishes the identification of fair housing issues led by a robust community process, and development of a meaningful action plan—all core aspects of the Equity Plan.

History of Housing Discrimination in the Region

Cumberland County's settlement history is closely linked with its economy and geographic location. Fishing, and the other types of agriculture that dominated the economy as the region was formed, as well as the area's distance from the center of the country's slave trade, discouraged the use of slavery. Yet Maine still played a role in the slave trade as early

as the 17th and 18th centuries, where both slave labor and profits derived from enslaved people helped develop many Maine businesses and communities. The slave economy in Maine was built mainly through the trading of lumber, molasses, and rum by merchants and shipbuilders.

The population of Black Mainers has historically been small compared to the white population. From 1830 to 1950, the Black population increased from 1,000 to 2,000 and the white population soared from 398,000 to 910,000. During this time, the state had a strong Nativist movement and presence of the Ku Klux Klan that ensure Black Mainers did not feel welcome despite their multi-generational residency.¹ Although segregation was never formally codified into law, other forces led to segregation—namely, housing discrimination.² Discrimination was also routinely experienced by Native Americans, Irish Catholics, French Canadians, and Jews.

According to Eben Simmons-Miller, a scholar in the politics of fair housing in Maine, housing discrimination “was the most recognized form of oppression faced by Maine’s African Americans” as late as the 1960s.³ While some middle class African American households found housing options in the broader region, African American households in Portland “...remained in ethnically mixed neighborhoods on the Portland peninsula as they could not afford the expensive rents elsewhere due to limited employment options.”⁴ Homes were often in substandard condition in these areas, thus impacting the value of the home and the amount of economic resources the neighborhood could attract. Discrimination within the housing market severely limited choices for racial and ethnic minorities and thus resulted in segregation within the city.

Ethnic minorities were also confronted with prejudice. Early census records in the Northeast recorded Acadians (French descendants living in Nova Scotia who had been forcibly removed by the British during the 1754-1763 French and Indian War), Irish, Jewish, and French-Canadian populations separately from the white population—indicating a different classification of residency. Although the 1820 Maine Constitution allowed Black men and people with no property to vote, it disenfranchised paupers who resided in houses made for poor people and those who received public assistance. Census data from 1850 to 1904 shows this population was mostly immigrants and people of color.⁵ In 1893,

¹ Lumpkins, Charles L. "Civil-Rights Activism in Maine, 1945-1971." *Maine History* 36, 3 (1996): 70-85. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol36/iss3/2>

² Lumpkins, Charles L. "Civil-Rights Activism in Maine, 1945-1971." *Maine History* 36, 3 (1996): 70-85. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol36/iss3/2>

³ Simmons-Miller, Eben. "Resistance In "Pioneer Territory": The Maine NAACP and the Pursuit of Fair Housing Legislation." *Maine History* 36, 3 (1996): 86-105. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol36/iss3/3>

⁴ Hillebrand, Justus. "Making it Work Before the Movement: African-American Community and Resistance in 1940s and 1950s Portland, Maine." *Maine History* 49, 1 (2015): 39-76. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol49/iss1/3>

⁵ Myall, James (2020). *Race and Public Policy in Maine: Past, Present, and Future*. *Maine Policy Review*, vol. 29, no. 2.

an amendment was added to the state constitution that required literacy tests to vote; this was a major barrier to poor white immigrants in the state. Mainers voted to enfranchise paupers in 1965 through a constitutional amendment and removed the literacy requirement in 1970 following an amendment to the Voting Rights Act.⁶ The history of voter enfranchisement is important to recognize, as the laws that elected officials dictated often reflected the attitudes of the white, economically powerful actors within the housing market.

A map of Portland made in 1935 used by bankers and real estate agents to evaluate mortgage risks designates “foreign-born, negro, or lower grade populations” as “hazardous.” It also labels where Irish, Italian, Jewish, and Polish neighborhoods were located.⁷ The practice of rating neighborhoods based on perceived risk was largely based on prejudice and excluded people in “hazardous” neighborhoods from accessing homeownership and the generational financial benefits that come with it. According to David Freidenreich, Professor of Jewish Studies at Colby College, real estate agents also steered Jewish and immigrant families away from affluent areas of town, thus creating segregated neighborhoods and unequal housing opportunities.⁸

Today, historical segregation in Portland and Cumberland County is reinforced by:

- Limited housing production and slow growth regulations;
- Lack of affordable housing, particularly for families outside of Portland, South Portland, Scarborough, and Westbrook;
- Denial of rental housing, especially for Housing Choice Voucher holders;
- Limited opportunities to attain homeownership;
- Disparities in educational attainment, which have long term effects on economic equality; and
- Land use regulations in some jurisdictions that favor more expensive, ownership housing and limit multifamily housing for all but seniors.

Primary Findings

This section summarizes the salient findings from the AI research, which was used to determine the primary issues, or challenges, to fair housing choice.

⁶ Ibid.

⁷ Maine Historical Society. Redline map of Portland and South Portland, 1935. <https://www.mainememory.net/artifact/105920>

⁸ Freidenreich, David. Redlining and Jewish Communities in Maine. <https://www.mainememory.net/sitebuilder/site/3086/page/4887>

Housing Choice

Housing production in Cumberland County lagged population growth between 2010 and 2020, leading to increases in prices and very low vacancies—conditions that negatively impact housing choice.

Population in Cumberland County rose by 7.6% between 2010 and 2020, while occupied and vacant housing units rose by 6%, according to the ACS data. Local permit data shows that Portland (District 5) produced the most housing units of any singular jurisdiction in the county between 2010 and 2022, with nearly 5,000 units approved and over 2,000 certificates of occupancy issued over that time period.⁹ A quarter of all units approved since 2010 are designated to be affordable. District 1 (made up of six jurisdictions) and District 2 (made up of eight jurisdictions) added an estimated 3,600 and 3,400 housing units between 2010 and 2020. The suburban communities of Scarborough and Westbrook each added a little more than 1,100 units over the same time period.

Mainers who are more likely to be disparately impacted by policies that limit development of housing, especially affordable housing, include:

- African American/Black households, Asian households, Hispanic households, Other Race household, and single parents (resident survey). These households report housing challenges—living in overcrowded conditions, living in housing in poor condition, being unable to maintain rent or utility payments—at higher rates than other resident groups.
- African/American/Black households also have the highest levels of segregation and experienced a large increase in segregation since 2010 (Figure IV-17).

Portland provides more housing to low income households than its proportionate share of county households overall. Specifically, the City of Portland houses 35% of households with incomes less than \$25,000, compared to 25% of all households in the county. Westbrook also houses a higher share of households with incomes below \$25,000 than households overall. In contrast, Falmouth, Gray, and Scarborough have the largest differences in the share of households with incomes of less than \$25,000 and households overall (Figure IV-23 series).

This difference is partially, although not entirely, related to the provision of affordable housing. A comparison of rental units priced at less than \$650/month (affordable to households with incomes of \$25,000 and less) showed modest differences in the share of affordable rentals compared to all rentals, with Bridgton, Brunswick, Portland, and mostly Westbrook providing a slightly higher share of affordable rentals than rental units overall. A

⁹ ACS data estimates for the city of Portland reported low unit growth between 2010-2020, which did not take into account recent permitting and approval activity.

similar analysis of owned homes found only modest variances in shares with only resort-oriented counties providing a lower share of affordable homes for purchase. In sum, the region is not significantly unbalanced, and differences are due both to where low wage jobs are located and where older residents living on fixed incomes are located, in addition to the location of affordable housing.

Deeply affordable housing—especially that accommodating families—is concentrated in Portland. The neighborhoods with the highest concentrations of affordable housing are also those with relatively high rates of poverty and schools with average educational proficiency. This is countered with strong access to employment. Outside of the Portland-South Portland area, most affordable units are targeted for elderly residents (Figure VI-46). **Policies that favor affordable elderly housing over affordable family housing work to limit access to quality education for low income families.**

In Greater Portland (Figure VI-26), Multiple Race and Other households face very high rates of burden while earning moderate incomes. This could suggest that discrimination in the housing market is limiting their housing choices, forcing them into disproportionately over-priced units.

Denial of rental housing is common, especially for voucher holders. Nearly 30% of respondents who looked for housing experienced denial of housing and **90% of voucher holders said finding a landlord that accepts vouchers is difficult to very difficult** (resident survey).

- Mainers most likely to be denied housing include: Other Race, Asian, Hispanic, and African American households, households making less than \$25,000, single parents, and households with a member experiencing a disability.
- Landlord refusal to accept vouchers disparately impacts African American/Black households who are disproportionately represented among voucher holders (Figure VI-42).

Nearly 20% of survey respondents have been displaced from their home in the past five years, mostly because they could not keep up with rent (resident survey).

- Single parents, precariously housed respondents, Other Race and African American/Black respondents, households that make less than \$50,000, and households with a member experiencing a disability reported the highest rates of displacement.

About 16% of survey respondents reported they have experienced discrimination in the past five years (resident survey).

- Hispanic, Other Race, and Asian respondents, as well as households making less than \$25,000, precariously housed respondents, and Brunswick respondents reported the highest rates of discrimination.

Of respondents reporting a disability, **about 25% report that their current housing situation does not meet their accessibility needs** (resident survey).

Homeownership

Homeownership opportunities for younger Mainers are increasingly limited by rapidly increasing housing prices. In Portland, Cumberland County, and the State of Maine, 85-year-olds are more likely to be homeowners than those under 35 years old.

African American/Black households have extremely low homeownership rates—11% in Portland and 19% in Cumberland County, compared to 25% in Maine (Figure VI-34). To close other racial gaps in ownership, an estimated 164 Asian renters, 51 Native American renters, and 141 Hispanic renters would need to become owners. A much larger number—1,169 African American/Black renters—would need to become owners to close the White/Black homeownership gap (Figure VI-32s).

Home loan denial rates were lowest among African American/Black and White Cumberland County applicants, at 10% and 11% respectively (Figure VI-38a). For African Americans, barriers to ownership are likely driven by several factors other than mortgage loan denials. Portland, which has the largest concentration of Cumberland County's African American/Black population, has a younger population and lower overall income relative to the county. Another factor is that the majority of Portland's African American/Black population are foreign-born. The foreign-born population faces distinct challenges to homeownership, including unfamiliarity with the banking system, language barriers, and credit history length. Moreover, for Portland residents who practice Islam, Islamic law does not allow taking on interest-bearing loans, which makes buying a home with a traditional mortgage infeasible. White applicants appear less likely to be denied in many of the neighborhoods where applicants of color are focusing their homebuying efforts—mostly in suburban Portland.

Access to Opportunity

On average, residents are fairly satisfied with their transportation situation. Stakeholders raised more barriers, noting that the lack of an effective regional public transportation system limits where residents can access jobs and pushes people to stay in Portland where costs are higher. Residents who report that they can't get to public transit or buses easily live in Scarborough and Windham, are Hispanic and Other, and households that make less than \$25,000 (resident survey).

Economically disadvantaged students make up more than half of school enrollment in the Westbrook School District, Harpswell Coastal Academy, RSU 17 (serving Harrison), and RSU 61 (serving Bridgton and Naples). These school districts also

experienced some of the lowest rates of student testing success among all county school districts (Figures V-15 and V-17)—suggesting that these districts need more support to address the needs of economically disadvantaged students.

Low educational attainment has long term effects on earnings and wealth building, and disparities in educational attainment can reinforce long term economic inequality. County residents with a bachelor’s degree earn 56% more than those with a high school diploma, while Portland residents with a bachelor’s degree earn 48% more than their counterparts with a high school diploma—higher than the state overall (Figure V-27). Educational attainment also affects the ability to attain homeownership: 52% of county residents with a high school diploma own their home, compared to 76% for those with a college degree (Figure V-29). **Compared to the state, it is more difficult for city and county households with lower levels of educational attainment to become homeowners.**

Zoning and Land Use

In recent years, common zoning ordinances and land use regulations are being reconsidered due to their historical effect of restricting housing production and choice. While laws in the State of Maine address many possible regulatory barriers to housing choice, local policies in some jurisdictions may impact housing choice and availability.¹⁰ These include:

- Growth ordinances that exempt affordable senior but not affordable family housing;
- Limited land available for multifamily development and/or use regulations which restrict housing density and unit types;
- Residential growth caps and other dimensional standards, such as large lot sizes;
- Limited public infrastructure, particularly water and sewer systems, and/or capital funding to build the public infrastructure systems needed to support a wider variety of housing and a range of densities; and
- Very large and restrictive dimensional standards that discourage or disallow all but higher-cost single family homes.

¹⁰ Refer to Section VIII of this report for more information and recommendations related to removing zoning and land use barriers to housing production.

Progress Addressing Fair Housing Issues Identified in Past AIs

The City of Portland last reviewed fair housing issues as part of the Greater Portland Council of Governments Sustainable Communities Initiative—*Sustain Southern Maine*—and in a 2013 AI. Both were adopted by the City Council.

The major housing issues in Portland that emerged from the 2013 AI included:

- Concentrations of poverty, African American/Black residents, foreign born residents, single parent households, and publicly assisted housing;
- Limits on the effectiveness of the Section 8 program due to lack of housing in the broader region;
- Housing choice issues for new immigrants caused by landlords' unfamiliarity of cultural customs and norms;
- Landlord skepticism around state funding of General Assistance and subsidy payments that are lower than market rents;
- Lack of awareness by landlords related to reasonable accommodations' laws and a belief that housing tenants with disabilities is costly;
- Bias against renting to single parent, female headed, households with children; and
- High and increasing rents.

Cumberland County conducted its AI in 2010. The issues identified in that study included:

- Fair housing violations occur in reasonable accommodations for persons with disabilities and discrimination based on familial status and sex;
- Refugee and immigrant housing needs are unaddressed;
- Discrimination based on source of income occurs; and
- There are limited options for affordable rental and ownership housing within entitlement and suburban communities. Zoning restrictions and limited water and sewer and utilities connections contribute to the lack of housing options.

The following fair housing issues were identified in the broader region in *Sustain Southern Maine*:

- Lack of knowledge about landlord/tenant and Fair Housing laws;
- Constraints on refugee choices of where to live;
- Shortage of barrier-free housing;
- Lack of awareness of reasonable accommodations;

- Setback requirements that prevent people with disabilities from getting ramps built;
- Need for homebuyer education and financial literacy for those under-represented in single family lending; and
- Vulnerability to lead hazards in housing for children.

To address these issues, the City of Portland:

- Actively pursued regional partnerships that work to widen the public transportation network and provide housing opportunities for a diversity of people throughout the region;
- Reformed land use regulations to increase allowable densities, reduce minimum lot sizes, incentivize affordable housing construction, and require affordable housing in certain contexts (more details on these efforts can be found in Section VIII);
- Works to encourage other communities in the region to develop affordable housing;
- Created a partnership with the Cumberland County Community Development Office and local landlord associations to provide landlord awareness workshops;
- Launched initial efforts to set up a housing liaison system to resolve landlord/tenant issues, resulting in the formation of the Rental Housing Advisory Committee; and
- Administers a Rent Control Board created by a citizen-approved initiative.

To address these issues, Cumberland County:

- Funded landlord education and training;
- Funded tenant education to increase awareness of fair housing laws and rights;
- Educated local policymakers and leaders on fair housing issues, including the Cumberland County Municipal Oversight Committee; and
- Worked with municipalities to encourage development of affordable housing in every community and ensure that local ordinances are consistent with state and federal law concerning group homes and special needs housing.

These efforts have been an important part of mitigating fair housing violations, raising awareness about affordable housing needs, and increasing fair housing knowledge and awareness.

As this AI update demonstrates, many of the county's and jurisdictions' housing challenges have increased since these studies were conducted, as a result of growing demand for housing, rising costs of housing, and intensifying economic inequality. These forces have made housing challenges worse due to a historical lack of investment in affordable housing to facilitate housing choice. In sum, **housing challenges have become more**

complex—requiring ambitious and collective efforts to expand housing choice.

Fair Housing Issues and Fair Housing Action Plan

This section outlines the fair housing issues identified in this AI with recommendations for how the participating jurisdictions should address the identified issues and further fair housing choice.

Primary Fair Housing Issues Negatively Affecting Housing Choice

Residents most affected by housing choice issues include African American/Black households, Asian households, Hispanic households, Other Race households, and single parents. Issues negatively affecting housing choice include:

- Limited housing, especially affordable housing production, contributing to rising rents and a loss of overall affordability;
- Lack of a local commitment of many jurisdictions to address regional housing needs;
- Concentrations of deeply subsidized rental housing in the city of Portland;
- Land use policies in many small jurisdictions that favor affordable elderly housing over affordable family housing, restricting access to high equality educational environments;
- Denial of rental housing to Housing Choice Voucher holders;
- Housing discrimination, especially for people of color, very low income households, and those who are precariously housed; and
- Zoning ordinances and land use regulations that restrict the type of housing needed, including affordable family housing and multifamily housing, from being developed.

Recommendations for addressing fair housing issues. To address production and affordability issues, Cumberland County should:

1. Activate the power of Maine’s new legislation (L.D. 2003) to increase the supply of housing:
 - a. Provide guidance and technical assistance to Cumberland County communities on how to rewrite land use codes to allow increased density for affordable housing developments. This should include developing model code language that jurisdictions can enact or model to ensure that duplexes/triplexes/ fourplexes (and similar types of low density, multi-unit housing) are feasible to develop. Stakeholders interviewed for this AI noted that some jurisdictions require unreasonably large lots for duplexes (e.g., four acres);

- b. Explore the feasibility of a program that incentivizes increased density, including up to six-plexes, in growth areas along corridors and in and near commercial zones when the majority of units are affordable¹¹;
 - c. Explore a partnership with the City of Portland to develop pre-approved development prototypes for ADUs to lower pre-development costs of homeowners; and
 - d. Explore a partnership with the City of Portland to work with community development financial institutions and foundations to develop favorable financing for affordable housing including ADUs.
2. Share the results of this study with local jurisdiction leaders and planning commissions and GPCOG membership and facilitate a discussion of how to establish a regional commitment to housing production, building upon the new statewide housing production goals. Explore with GPCOG tying transportation funding to progress toward production goals.
 3. Share the results of this study with industry representatives, including property managers and real estate agents, through presentations at conferences and annual meetings, to build commitment to collectively addressing issues.
 4. Encourage local jurisdictions to use the data and findings from this study to inform housing and land use planning.
 5. Encourage housing authorities to improve their websites and language access options in housing applications, as discussed in Section VI.
 6. Encourage local jurisdictions to remove bias against non-elderly affordable housing. Many zoning ordinances exempt senior housing from growth ordinances but not affordable housing. Restricting exemptions to senior housing has an adverse and disparate impact on families.
 7. Fund education and training and testing to build knowledge of fair housing protections, especially to clarify that the state requires vouchers to be accepted under the “public assistance” protected class. This should include testing with real estate agents about prequalification requirements for certain protected classes (disparities were found in the resident survey) and testing to uncover appraisal discrimination, as well as training for property owners to build commitment to providing comfortable and culturally sensitive housing environments for New Mainers.
 8. Evaluate the success of the public housing authorities’ “signing bonus,” repair grant, security deposit assistance, and damage reimbursement programs and seek funding to support the programs that have been shown to be successful in

¹¹ Austin’s Affordability Unlocked program would be a place to start.

increasing the number of landlords who offer units to Housing Choice Voucher holders.

To address production and affordability challenges: the City of Portland should:

1. Continue to invest in, require contributions of developers for, and incentivize development of affordable and mixed-income housing. Ensure that these efforts produce housing that is needed to address disproportionate housing needs by monitoring affordability, occupancy, and location of units developed.
2. Allow higher densities in multifamily development (six, eight- and greater) along corridors and priority growth areas, with proportionate dimensional (height, scale, etc.) bonuses for the inclusion of affordable units in new housing projects.¹²
3. Enact the recommendations to facilitate housing production of the Land Code Evaluation as part of Recode Portland Phase II. Make the recommended changes to the city's zoning code detailed in Section VIII, pages 18 through 19.
4. Fund education and training and testing to build knowledge of fair housing protections, especially to clarify that the state requires vouchers to be accepted under the "public assistance" protected class. Utilize the city's rental registration program to convey fair housing information.
5. Explore the use of City resources to assist low income tenants with deposit requirements for rental housing (first and last month's rent, security/damage deposits).
6. Explore the use of City resources to assist tenants with fair housing questions and requirements.
7. To support regional efforts of adding housing units at densities feasible in suburban and rural parts of Cumberland County, partner with Cumberland County to:
 - a. Explore developing a regional program that offers pre-approved development prototypes for ADUs to lower pre-development costs of homeowners;
 - b. Explore working with community development financial institutions and foundations to develop favorable financing for affordable housing including ADUs; and
 - c. Consider allowing larger sized ADUs and waiving fees for ADUs that are accessible or have universal design.

¹² Austin's Affordability Unlocked program would be a place to start.

Issues Affecting Homeownership Attainment

Residents most affected by issues affecting their ability to attain homeownership include young adults, African American/Black households, and Hispanic households. Issues impacting their ability to attain homeownership include:

- Limited stock of starter homes for first time and lower income buyers;
- Lack of funds for a downpayment and difficulty qualifying for mortgage loans; and
- Zoning ordinances and land use regulations restrict supply of more affordable starter home products.

Recommendations for addressing issues affecting homeownership attainment.

To address issues affecting homeownership attainment, Cumberland County and Portland should:

1. Explore programs funded by foundations that offer greater downpayment assistance to residents who historically faced discrimination and restricted access to homeownership.¹³
2. Study the financial feasibility of creating ownership products affordable to 120% AMI (and less), leveraging the land use changes afforded by L.D. 2003. Share this information with participating jurisdictions to demonstrate how new affordable ownership products can be created.
3. Complete the Action Plan items to address the fair housing issues detailed above.

Issues Affecting Access to High Opportunity Environments

Issues impacting access to high opportunity environments include:

- Difficulty accessing public transit or buses in suburban Portland jurisdictions and rural Cumberland County, pushing people into Portland where costs are higher and limiting where people with disabilities can live;
- Economically disadvantaged students are concentrated in a handful of school districts, which need more support to close learning gaps; and
- Low educational attainment exacerbates income inequality and limits wealth building through homeownership.

¹³ <https://www.cityofevanston.org/government/city-council/reparations> and <https://www.dearfieldfund.com/who-we-are/>

Recommendations for addressing issues affecting homeownership

attainment. To address issues affecting homeownership attainment, Cumberland County and Portland should:

1. Advocate for improvements to the county's public transportation system to more effectively connect low income workers with jobs both within Portland and in the broader region. Focus on accommodating the needs of persons with disabilities and pairing transportation investments with housing affordability opportunities.
2. Advocate for additional funding in schools that have disproportionate shares of economically disadvantaged students.
3. Accomplish the Action Items to expand housing choices for families in suburban and rural communities.

SECTION II.

COMMUNITY ENGAGEMENT—RESIDENT SURVEY ANALYSIS

SECTION II.

Community Engagement — Resident Survey Analysis

This section reports the findings from the resident survey conducted of Cumberland County residents, as well as stakeholder focus groups and interviews, to better understand residents' experiences with housing choice and access to opportunity throughout the county. The survey explores residents' housing, affordability, and neighborhood challenges including experiences with displacement and housing discrimination. It also asks about residents' access to economic opportunity, captured through reported challenges with transportation, employment, and K-12 education. The survey was offered in English, Arabic, French, Portuguese, Somali, and Spanish.

The resident survey was available online, in a format accessible to screen readers, and promoted through jurisdictional communications and social media and through partner networks. A total of 751 residents participated.

Explanation of terms. Throughout this section, several terms are used that require explanation.

- “Precariously housed” includes residents who are currently homeless or living in transitional or temporary/emergency housing, as well as residents who live with friends or family but are not themselves on the lease or property title. These residents may (or may not) make financial contributions to pay housing costs or contribute to the household in exchange for housing (e.g., childcare, healthcare services).
- “Disability” indicates that the respondent or a member of the respondent’s household has a disability of some type—physical, mental, intellectual, developmental.
- “Single parent” are respondents living with their children only or with their children and other adults but not a spouse/partner.
- “Tenure” in the housing industry means rentership or ownership.
- “Large households” are considered those with five or more persons residing in a respective household.
- “Seriously Looked for Housing” includes touring or searching for homes or apartments, putting in applications, or pursuing mortgage financing.

Sampling note. The survey respondents do not represent a random sample of the county or jurisdictions' population. A true random sample is a sample in which each individual in the population has an equal chance of being selected for the survey. The self-selected nature of the survey prevents the collection of a true random sample. Important insights and themes can still be gained from the survey results, however, with an understanding of the differences among resident groups and between jurisdictions and the county overall. Overall, the data provide a rich source of information about the county's households and their experience with housing choice and access to opportunity in the communities where they live.

Jurisdiction-level data are reported for cities in Cumberland County with 25 responses or more. Response by jurisdiction and demographics are shown in the figures on the following page.

Compared to Cumberland County residents overall, the survey respondents are:

- Similar in racial and ethnic distribution. Eighty-six percent of residents in the county overall are non-Hispanic White compared to 90% of survey respondents.
- Less likely to be high income. Thirty-seven percent of Cumberland County households earn \$100,000 and more compared to 28% of survey respondents.
- Less likely to be homeowners. Seventy percent of Cumberland County households are homeowners compared to 52% of survey respondents.
- More likely to have a disability. Eleven percent of Cumberland County residents have a disability compared to 30% of survey respondents.
- Similar in the presence of children under 18 in their household. Twenty six percent of Cumberland County households have children compared to 28% of survey respondents.
- More likely to be over the age of 65. Eighteen percent of the county overall are older than 65 compared to 24% of survey respondents.
- More likely to be single parent households. Five percent of Cumberland County households¹ are single parents compared to 24% of survey respondents.
- Slightly less likely to be living in a large household. Six percent of Cumberland County households live in a household with five or more people compared to 5% of survey respondents.

¹ This data is from 2019 5-year ACS estimates; 2020 ACS data for single parent households in Cumberland County was not available at the time of this report.

Figure II-1 Survey Respondents by Race/Ethnicity

Note:

n=620; 131 respondents did not indicate their race or ethnicity. Totals do not equal 100%; respondents were allowed to select all options that applied.

Source:

Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey

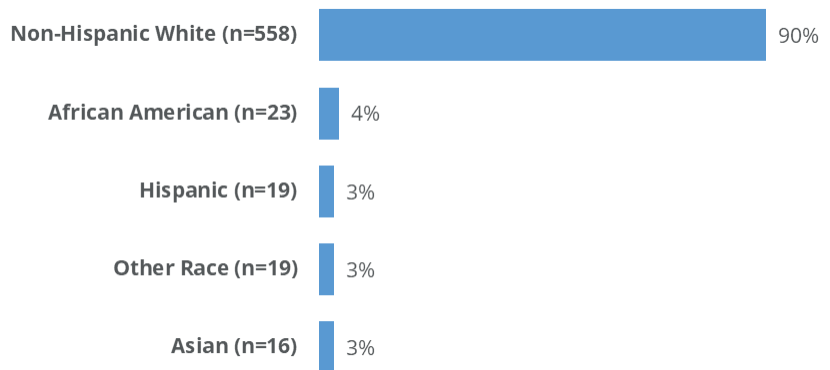


Figure II-2. Survey Respondents by Tenure

Note:

n=741.

Source:

Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey

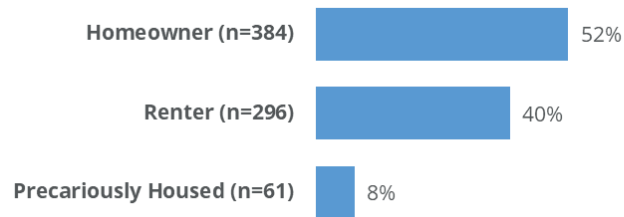


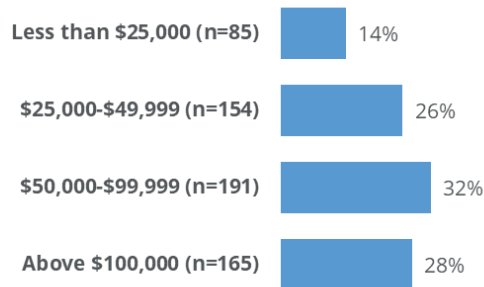
Figure II-3. Survey Respondents by Income

Note:

n=595.

Source:

Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey



**Figure II-4.
Survey Respondents
by Selected
Household
Characteristics**

Note:
Denominator n ranges from 178 to
650.

Source:
Root Policy Research from the 2022
Portland/Cumberland County
Analysis of Impediments to Fair
Housing Resident Survey

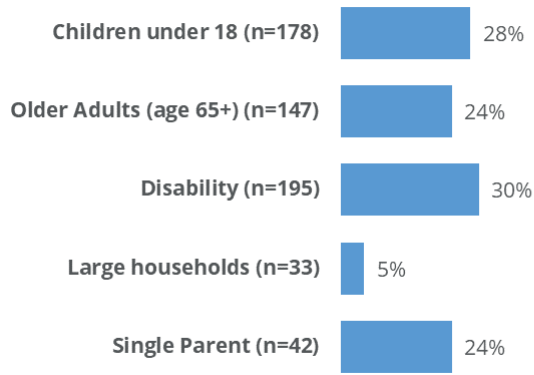


Figure II-5.
Resident Survey Sample Sizes by Jurisdictions and Selected Characteristics

	County	Jurisdictions						
		Brunswick	Cape Elizabeth	Portland	Scarborough	South Portland	Westbrook	Windham
Total Responses	751	31	48	318	26	90	48	57
Race/Ethnicity								
African American	23	0	4	9	0	0	4	1
Hispanic	19	0	0	10	1	1	1	1
Asian	16	1	0	5	2	1	1	1
Other Race	19	1	0	4	0	3	2	4
Non-Hispanic White	558	25	35	261	20	70	36	36
Tenure								
Homeowner	384	12	36	145	15	42	12	40
Renter	296	15	6	155	7	37	33	11
Precariously Housed	61	4	5	15	4	9	2	5
Income								
Less than \$25,000	85	7	1	33	5	9	11	5
\$25,000-\$49,999	154	7	5	65	2	22	16	11
\$50,000-\$99,999	191	10	17	86	6	22	11	10
Above \$100,000	165	3	13	77	10	19	5	12
Household Characteristics								
Children under 18	178	8	15	70	9	19	8	16
Large households	33	1	1	11	2	3	3	6
Single Parent	42	2	4	15	2	5	2	6
Disability	195	7	10	79	8	30	14	14
Older Adults (age 65+)	147	3	19	44	6	19	14	12

Note: Numbers do not aggregate either due to multiple responses or that respondents chose not to provide a response to all demographic and socioeconomic questions.

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Primary Findings

The survey data present a unique picture of the housing choices, challenges, needs, and access to economic opportunity of Cumberland County residents.

Top level findings from residents' perspectives and experiences include:

- The **limited supply of housing** that accommodates voucher holders presents several challenges. Specifically,
 - Ninety-percent of voucher holders represented by the survey find a landlord that accepts a housing voucher to be “difficult” or “very difficult.”
 - According to the survey data, landlords that have policies of not renting to voucher holders is a top impediment for residents who want to move in Cumberland County, as well as for precariously housed respondents, renters, non-Hispanic White respondents, households making less than \$50,000, single parents, households with a member experiencing a disability, households with children under 18, and several jurisdictions.
- **Low income is a barrier** to accessing housing. The impacts are highest for Asian households, precariously housed respondents, households making less than \$25,000, single parents, and Westbrook respondents.
- **Nearly 30% of respondents who looked for housing experienced denial of housing.** Other Race, Asian, Hispanic, and African American respondents, as well as households making less than \$25,000, single parents, and households with a member experiencing a disability reported the highest denial rates.
- **Nearly 20% of residents have been displaced** from their home in the past five years. One of the main reasons cited for displacement was *the rent increased more than I could pay*. Single parents, precariously housed respondents, renters, Other Race and African American respondents, households that make less than \$50,000, and households with a member experiencing a disability reported the highest rates of displacement.
- **About 16% of residents reported they have experienced discrimination** in the past five years. Hispanic, Other Race, and Asian respondents, as well as households making less than \$25,000, precariously housed respondents, and Brunswick respondents reported the highest rates of discrimination.
- **Residents lack awareness or knowledge about what to do if they have experienced discrimination.** The most common actions in response to discrimination cited by survey respondents were *Nothing/I wasn't sure what to do* and *Moved/found another place to live*.

- Of respondents reporting a disability, **about 25% report that their current housing situation does not meet their accessibility needs.** The three top greatest housing needs identified by respondents included services onsite to help with mental health and counseling, installation of grab bars in bathroom or bench in shower, and service or emotional support allowed in their home.
- On average, respondents are **fairly satisfied with their transportation situation.** Groups with the highest proportion of respondents somewhat or not at all satisfied with their transportation options included Brunswick, Hispanic, Other Race, Asian, and African American respondents, as well as precariously housed respondents, households making less than \$25,000, large households, and households with a member experiencing a disability.

There are some housing, affordability, and neighborhood challenges unique to specific resident groups. These include:

- **My home/apartment is in bad condition**—Most likely to be a challenge for Brunswick respondents, as well as Other Race, Hispanic, precariously housed, households making less than \$25,000, and single parents.
- **My house or apartment isn't big enough for my family**—Most likely to be a challenge for Brunswick and Windham respondents, as well as African American, Asian, Hispanic, renters, precariously housed, large and single parent household respondents.
- **I can't keep up with my utilities**— Most likely to be a challenge for Westbrook respondents, as well as Other Race and Asian respondents, single parents and households that make less than \$25,000.
- **I can't keep up with my property taxes**— Most likely to be a challenge for Cape Elizabeth and South Portland respondents, as well as African American and Other Race respondents, large households and households that make less than \$25,000.
- **My neighborhood does not have good sidewalks, walking areas, and/or lighting**— Most likely to be a challenge for Scarborough and Windham respondents, Other Race and Asian respondents, large households, and households with a member experiencing a disability.
- **I can't get to public transit/bus easily or safely**—Most likely to be a challenge for Scarborough and Windham respondents, Hispanic and Other Race respondents, and households that make less than \$25,000.

Housing, Neighborhood and Affordability Challenges

Survey respondents were asked to select the housing challenges they currently experience from a list of 27 different housing, neighborhood, and affordability challenges. The figures on the following pages present the 10 housing challenges and top 5 affordability and neighborhood challenges experienced by jurisdiction, race/ethnicity, tenure, income, and selected household characteristics.

These responses allow for a way to compare the jurisdictions to the county for housing challenges for which other types of data do not exist. In this analysis, “above the county”—**shaded in light red or pink**—is defined as the proportion of responses that is 25% higher than the overall county proportion. “Below the county”—**shown in light blue**—occurs when the proportion of responses is 25% lower than the overall county proportion.

As shown in Figure II-6a, residents in Brunswick and South Portland experience several housing challenges at a higher rate than the county overall. Conversely, Cape Elizabeth, Scarborough, and Windham residents experience most housing challenges at a lower rate than the county.

Notable trends in housing, neighborhood, and affordability challenges by geographic area include:

- Residents in Brunswick and Portland report being more reticent to request a repair to their unit in fear that their landlord will raise their rent or evict them. These residents, along with South Portland residents, also report that their landlord refuses to make repairs despite their requests at a higher rate than the county.
- Brunswick and Windham residents report living in housing that is too small for their families.
- Brunswick and South Portland residents are more likely to report experiencing bed bugs/insects or rodent infestation in their home.
- Over 1 in 5 Brunswick survey respondents report that their home or apartment is in bad condition.
- South Portland residents are more likely to report living too close to environmental hazards, such as polluting factories or waste treatment facilities.
- Residents in Portland and South Portland are more likely to report that they don't feel safe in their neighborhood or building.
- South Portland and Westbrook respondents expressed the greatest need for assistance in taking care of themselves or their home.
- Scarborough and South Portland residents are more likely to report being bullied or harassed by their landlord or other tenants.

Figure II-6a.
Top 10 Housing Challenges Experienced by Jurisdiction

■ 25% Above County average
■ 25% Below County average

Housing or Neighborhood Condition	County	Cape						
		Brunswick	Elizabeth	Portland	Scarborough	South Portland	Westbrook	Windham
Valid cases	735	30	46	311	26	90	47	56
My home/apartment is in bad condition	13%	23%	11%	15%	12%	13%	13%	4%
My house or apartment isn't big enough for my family members	12%	17%	7%	15%	12%	11%	6%	16%
I worry that if I request a repair it will result in a rent increase or eviction	12%	20%	9%	16%	0%	12%	11%	5%
My landlord refuses to make repairs despite my requests	7%	13%	4%	9%	0%	11%	6%	2%
I need help taking care of myself/my home and can't find or afford to hire someone	7%	7%	7%	6%	4%	9%	9%	2%
I live too far from family/friends/my community	5%	17%	4%	3%	4%	4%	4%	11%
I don't feel safe in my building/neighborhood	4%	3%	2%	6%	0%	6%	2%	0%
I have bed bugs/insects or rodent infestation	4%	10%	2%	4%	0%	8%	4%	2%
I am too close to environmental hazards (polluting factories, waste treatment)	4%	3%	2%	3%	0%	14%	0%	0%
I/my family is bullied or harassed by my landlord or other tenants	3%	3%	2%	3%	4%	4%	2%	2%
None of the above	63%	47%	72%	59%	81%	58%	68%	73%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

The following sections and figures show more in-depth responses for housing and neighborhood challenges by:



- Housing affordability challenges only; and
- Neighborhood challenges only.

Housing affordability challenges. As shown in Figure II-6b, respondents in South Portland, Westbrook, Brunswick, and Windham experience affordability challenges at a higher rate than the county overall. Conversely, Cape Elizabeth and Scarborough respondents experience affordability challenges at a lower rate than the county.

The most significant geographic variations occur in:

- South Portland and Westbrook respondents experience most affordability challenges at a greater rate than the county overall. Respondents in both jurisdictions are more likely than the average county respondent to have bad credit or a history of eviction/foreclosure impact their ability to find a place to rent. Accordingly, these respondents are almost twice as likely to be late on their rent payments.
- Cape Elizabeth respondents are more than twice as likely than the average county respondent to be late paying their property taxes. South Portland respondents also report being more likely to be late paying their property taxes.
- Westbrook respondents are almost twice as likely to be delinquent paying utility bills.
- Westbrook, South Portland, and Portland respondents are most likely to be late on their rent payments.
- In addition to South Portland and Westbrook, Brunswick respondents are more than twice as likely to have bad credit or history of eviction/foreclosure impacting their ability to rent. Windham respondents also report this challenge at a higher rate than the county.
- Windham and Brunswick respondents are more likely to be late on their mortgage payments.

Figure II-6b.
Top 5 Affordability Challenges Experienced by Jurisdiction

 25% Above County average
 25% Below County average

Affordability Challenges	County	Cape				South		
		Brunswick	Elizabeth	Portland	Scarborough	Portland	Westbrook	Windham
Valid cases	725	31	47	306	25	87	47	55
I can't keep up with my utilities	12%	6%	6%	12%	0%	13%	21%	15%
I can't keep up with my property taxes	6%	6%	13%	6%	0%	8%	2%	2%
I'm often late on my rent payments	5%	3%	0%	7%	0%	8%	9%	5%
I have bad credit/history of evictions/foreclosure and cannot find a place to rent	4%	10%	0%	4%	4%	6%	6%	7%
I'm often late on my mortgage payments	2%	3%	0%	1%	0%	2%	2%	5%
None of the above	77%	74%	83%	77%	92%	77%	72%	75%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Neighborhood challenges. As shown in Figure II-6c, respondents in Windham experience neighborhood challenges at a higher rate than the county. Westbrook, Portland, and South Portland experience neighborhood challenges at a lower rate than the county.

Cape Elizabeth and Scarborough respondents report divergent experiences related to neighborhood challenges: Respondents identified more challenges around neighborhood infrastructure and access to transit but fewer challenges around school quality, access to healthy food and job opportunities.

There are a handful of jurisdictions who experience specific neighborhood challenges at a disproportionate rate compared to the county.

- For instance, Scarborough and Windham respondents experience neighborhood infrastructure issues (e.g., bad sidewalks, no lighting) more acutely than county residents overall.
- Scarborough respondents are more than twice as likely to report that they can't access public transit easily or safely compared to the average county resident. Windham, Cape Elizabeth, and Brunswick respondents are also more likely to report transit access challenges in their neighborhoods.
- Brunswick and Windham respondents were more likely to report that they lived too far from work and there are not enough job opportunities in their areas.

Figure II-6c.
Top 5 Neighborhood Challenges Experienced by Jurisdiction

■ 25% Above County average
■ 25% Below County average

Neighborhood Challenges	County	Cape						
		Brunswick	Elizabeth	Portland	Scarborough	South Portland	Westbrook	Windham
Valid cases	713	31	46	299	24	85	47	55
My neighborhood does not have good sidewalks, walking areas, and/or lighting	27%	32%	24%	25%	38%	20%	23%	35%
I can't get to public transit/bus easily or safely	16%	23%	24%	9%	33%	15%	6%	25%
I live too far from work/there are not enough job opportunities in the area	8%	13%	2%	4%	4%	7%	4%	11%
There are no or few grocery stores/healthy food stores in the area	8%	3%	2%	10%	0%	7%	2%	5%
Schools in my neighborhood are poor quality	5%	0%	0%	5%	0%	2%	6%	5%
None of the above	58%	55%	63%	64%	38%	64%	66%	49%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Transportation access. Nearly 90% of respondents indicated the type of transportation used most often is driving a personal vehicle (89%). This share was relatively similar across the majority of jurisdictions and was the number one type of transportation used across all jurisdictions and demographic characteristics.

The groups with the lowest proportion of those who primarily drive included African American (40%), households making less than \$25,000 (53%), single parents (57%), and precariously housed (57%) respondents.

As shown in Figure II-7, on average respondents are fairly satisfied with their transportation situation. Those groups with the highest proportion of respondents somewhat or not at all satisfied with their transportation options include Brunswick (52%), Hispanic (42%), Other Race (38%), Precariously housed (34%), Asian, households making less than \$25,000, large households, and households with a member experiencing a disability (33%), and African American respondents (31%),

**Figure II-7.
Are you satisfied
with your current
transportation
options?**

Source:

Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

	Entirely satisfied	Mostly satisfied	Somewhat unsatisfied	Not at all satisfied	n
Jurisdiction					
County	34%	40%	19%	7%	633
Brunswick	22%	26%	41%	11%	27
Cape Elizabeth	36%	48%	17%	0%	42
Portland	31%	42%	19%	7%	277
Scarborough	38%	54%	0%	8%	24
South Portland	38%	37%	14%	11%	76
Westbrook	50%	33%	14%	2%	42
Windham	41%	39%	15%	5%	41
Race/Ethnicity					
African American	43%	26%	9%	22%	23
Asian	13%	53%	13%	20%	15
Hispanic	11%	47%	26%	16%	19
Other Race	31%	31%	19%	19%	16
Non-Hispanic White	35%	41%	19%	5%	555
Tenure					
Homeowner	38%	39%	19%	3%	318
Renter	30%	43%	19%	8%	261
Precariously Housed	28%	38%	17%	17%	47
Income					
Less than \$25,000	26%	40%	18%	15%	84
\$25,000-\$49,999	32%	41%	20%	7%	153
\$50,000-\$99,999	31%	42%	20%	6%	191
Above \$100,000	39%	40%	18%	3%	163
Household Characteristics					
Children under 18	38%	37%	16%	9%	177
Large Households	42%	24%	12%	21%	33
Single Parent	36%	36%	14%	14%	42
Disability	25%	42%	24%	9%	188
Older Adults (age 65+)	38%	41%	15%	5%	146

Differences in needs by race and ethnicity and housing tenure. As shown in Figure II-8a, and compared to the county overall:

- Respondents of color, as well as renters and those who are precariously housed experience several housing challenges at a higher rate than the county overall.
- Conversely, non-Hispanic White residents and homeowners are less likely to experience housing challenges.

Specifically,

- African American/Black residents are more than twice as likely to live in a house or apartment that isn't big enough for their family compared to county residents overall. Hispanic, Asian, and renter respondents are also more likely to experience this challenge.
- Asian, Hispanic, Other Race, Renter, and Precariously Housed households are more likely to report that their home or apartment is in bad condition.
- African American, Hispanic, and Other Race, respondents are more likely to report that their landlord refuses to make repairs despite their requests.
- Other Race respondents are almost three times more likely to need help taking care of themselves and their homes; Asian and African American respondents also experience this challenge at a higher rate than the county overall. The proportion of Other Race respondents older than 65 (38%) is higher than the county overall (24%). Additionally, Other Race, Asian, and African American respondents are more likely to experience a disability compared to the average county respondent.
- Hispanic respondents are more than four times as likely to live far away from their family and friends; African American and Other race respondents also disproportionately experience this challenge.
- African Americans are more three times as likely than the average county respondent to report that they don't feel safe in their building or neighborhood; Hispanic respondents are almost more than three times as likely to report this challenge. Both Renter and Precariously Housed respondents also experience this challenge.
- Other Race, African American, and Precariously Housed respondents experience bed bugs, insects, or rodent infestation at greater rates than the county overall. Asian and Renter households are also disproportionately impacted by this challenge.
- When compared to the county proportion overall, Hispanic (five times as likely), Asian and Other Race (more than four times as likely), and African American (three times as likely) respondents are more likely to report that they or their family were bullied or harassed by their landlord or other tenants.
- Other Race respondents are more likely to report living too close to environmental hazards, such as polluting factories or waste treatment facilities, than the average county respondent.

Figure II-8a.
Top 10 Housing Challenges Experienced by Race/Ethnicity and Tenure

■ 25% Above County average
■ 25% Below County average

Housing or Neighborhood Condition	County	Race/Ethnicity and Tenure								
		African American	Asian	Hispanic	Other Race	Non-Hispanic White	Homeowner	Renter	Precariously Housed	
Valid cases	735	23	16	19	16	544	373	293	59	
My home/apartment is in bad condition	13%	13%	25%	26%	31%	12%	6%	19%	20%	
My house or apartment isn't big enough for my family members	12%	30%	19%	26%	13%	10%	7%	17%	12%	
I worry that if I request a repair it will result in a rent increase or eviction	12%	9%	6%	5%	13%	13%	0%	28%	5%	
My landlord refuses to make repairs despite my requests	7%	13%	6%	16%	13%	7%	1%	15%	3%	
I need help taking care of myself/my home and can't find or afford to hire someone	7%	9%	13%	5%	19%	7%	6%	6%	8%	
I live too far from family/friends/my community	5%	13%	6%	21%	13%	5%	5%	6%	7%	
I don't feel safe in my building/ neighborhood	4%	13%	0%	11%	0%	4%	1%	7%	7%	
I have bed bugs/insects or rodent infestation	4%	9%	6%	5%	13%	3%	1%	6%	8%	
I am too close to environmental hazards (polluting factories, waste treatment)	4%	0%	0%	5%	6%	4%	3%	4%	2%	
I/my family is bullied or harassed by my landlord or other tenants	3%	9%	13%	16%	13%	3%	1%	5%	3%	
None of the above	63%	52%	56%	42%	56%	64%	78%	46%	64%	

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

The above trends are similar for the **most acute housing affordability challenges**. As shown in Figure II-8b, Other Race, African American and Asian households, as well as renters, experience affordability challenges at a higher rate than the county overall. Non-Hispanic White residents and homeowners experience these same challenges at a lower rate than the county.

- Other Race residents experience all five affordability challenges at a greater rate than the county overall.
- Other Race respondents are more than three times as likely than the average county respondent to be late paying their utility bills. Asian respondents are almost three times as likely to experience this challenge.
- African American, Other Race, and Asian Households are more than twice as likely than the average county respondent to be unable to pay their property taxes on time. Hispanic and homeowner respondents are also disproportionately impacted by this challenge.
- Other Race, African American, and Renter households are more likely to be late on their rent payments.
- Every category by race/ethnicity and tenure, with the exception of Hispanic and Homeowner respondents, reported bad credit or history of eviction/foreclosure impacting their ability to rent at a higher rate than the county overall. Precariously Housed respondents were more than five times as likely to experience this challenge, while Asian respondents were more than four times as likely.
- Other Race respondents are more than six times as likely to be late paying their mortgage compared with the average county respondent. Hispanic and Homeowner respondents are also disproportionately impacted by this challenge.

Figure II-8b.
Top 5 Affordability Challenges Experienced by Race/Ethnicity and Tenure

■ 25% Above County average
■ 25% Below County average

Affordability Challenges	County	African American	Asian	Hispanic	Other Race	Non-Hispanic White	Homeowner	Renter	Precariously Housed
Valid cases	725	23	16	18	16	547	373	285	59
I can't keep up with my utilities	12%	13%	31%	11%	38%	12%	8%	17%	17%
I can't keep up with my property taxes	6%	17%	13%	11%	13%	6%	10%	1%	5%
I'm often late on my rent payments	5%	13%	6%	0%	19%	4%	0%	11%	5%
I have bad credit/history of evictions/foreclosure and cannot find a place to rent	4%	9%	19%	0%	13%	5%	0%	6%	22%
I'm often late on my mortgage payments	2%	0%	0%	6%	13%	2%	3%	1%	0%
None of the above	77%	70%	56%	67%	44%	79%	84%	72%	61%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

As shown in Figure II-8c, respondents of color, as well as Precariously Housed respondents, face neighborhood challenges at a higher rate than the county. All of the aforementioned respondents are more likely to live in neighborhoods with fewer job opportunities and poorer quality schools than the average county respondent. Except for African American and Precariously Housed respondents, all respondents experience transit access challenges in their neighborhood more acutely than county residents overall.

Hispanic residents are more than three times as likely to not have access to grocery stores or healthy food in their neighborhoods when compared to the average county respondent. African American and Other Race respondents are also disproportionately impacted by this challenge.

Additionally, Other Race and Asian respondents are more likely to live in neighborhoods with poor infrastructure (e.g., bad sidewalks, no lighting).

Figure II-8c.
Top 5 Neighborhood Challenges Experienced by Race/Ethnicity and Tenure

■ 25% Above County average
■ 25% Below County average

Neighborhood Challenges	County	Race/Ethnicity and Tenure							
		African American	Asian	Hispanic	Other Race	Non-Hispanic White	Homeowner	Renter	Precariously Housed
Valid cases	713	21	15	18	15	543	370	281	54
My neighborhood does not have good sidewalks, walking areas, and/or lighting	27%	29%	40%	33%	47%	28%	31%	24%	22%
I can't get to public transit/bus easily or safely	16%	10%	27%	39%	33%	16%	18%	13%	17%
I live too far from work/there are not enough job opportunities in the area	8%	14%	20%	28%	13%	7%	6%	7%	20%
There are no or few grocery stores/healthy food stores in the area	8%	14%	7%	22%	13%	8%	6%	9%	6%
Schools in my neighborhood are poor quality	5%	14%	13%	22%	7%	4%	5%	3%	9%
None of the above	58%	57%	33%	28%	40%	58%	58%	61%	50%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Differences in needs by household status. As shown in Figure II-9a, single parents, households making less than \$25,000, households with a member experiencing a disability, and large households are more likely to experience housing challenges. Conversely, households making more than \$100,000 and respondents older than 65 experience nearly all specified housing challenges at a lower rate than the county.

Single parents, households with a member experiencing a disability, and households making less than \$25,000 disproportionately experience nearly every housing challenge at a greater rate than the county overall.

These households are more likely to experience the following challenges:

- My house or apartment is in bad condition;
- My landlord refuses to make repairs despite my request;
- I need help taking care of myself/my home and can't find or afford to hire someone;
- I live too far from family/friends/my community; and
- I/my family is bullied or harassed by my landlord or other tenants.

Single parents, large households, households with children under 18, and households with a member experiencing a disability are most likely to report that their house or apartment is too small for their family members. Additionally, single parent respondents and households that make less than \$25,000 are more likely to report having bed bugs, insects or rodent infestation.

Households with a member experiencing a disability are more than three times as likely to experience landlords refusing their requests to make repairs and twice as likely to live further away from family/friends/community and not be able to find or afford someone to help take care of themselves or their homes.

Figure II-9a.
Top 10 Housing Challenges Experienced by Income and Household Characteristics

■ 25% Above County average
■ 25% Below County average

Housing or Neighborhood Condition	County	Less than \$25,000	\$25,000-\$49,999	\$50,000-\$99,999	Above \$100,000	Children under 18	Large Households	Single Parent	Disability	Adults (age 65+)
Valid cases	735	85	151	183	162	173	33	41	193	142
My home/apartment is in bad condition	13%	21%	15%	15%	6%	14%	12%	24%	17%	8%
My house or apartment isn't big enough for my family members	12%	14%	13%	15%	7%	21%	30%	34%	17%	5%
I worry that if I request a repair it will result in a rent increase or eviction	12%	13%	19%	17%	4%	10%	6%	24%	16%	4%
My landlord refuses to make repairs despite my requests	7%	12%	9%	10%	2%	9%	9%	22%	10%	1%
I need help taking care of myself/my home and can't find or afford to hire someone	7%	19%	7%	6%	4%	7%	9%	12%	15%	8%
I live too far from family/friends/my community	5%	12%	3%	5%	3%	6%	12%	10%	8%	2%
I don't feel safe in my building/ neighborhood	4%	9%	5%	3%	1%	2%	3%	5%	6%	4%
I have bed bugs/insects or rodent infestation	4%	13%	3%	3%	0%	6%	9%	15%	5%	1%
I am too close to environmental hazards (polluting factories, waste treatment)	4%	4%	5%	5%	1%	2%	0%	5%	5%	4%
I/my family is bullied or harassed by my landlord or other tenants	3%	7%	6%	2%	1%	3%	0%	5%	6%	2%
None of the above	63%	44%	53%	58%	81%	61%	48%	39%	49%	73%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

As shown in Figure II-9b, households making less than \$50,000, as well as households with a member experiencing a disability and single parents, disproportionately experience affordability challenges at a higher rate than the county overall. Households making more than \$100,000 and adults over the age of 65 are less likely to experience affordability challenges.

Of households experiencing major affordability issues, **single parent households are most acutely impacted.** These households are nearly three times as likely to be late paying their utility bills and more than twice as likely to be late on their mortgage payments and have bad credit or a history of eviction/foreclosure impacting their ability to rent. Single parent households are also twice as likely to have trouble paying their rent.

Overall, the greatest affordability challenge experienced by county residents was paying their utility bills on time. Households making less than \$50,000, households with a member experiencing a disability, large households, and households with children under 18 report having the greatest difficulty keeping up with their utility bills.

Figure II-9b.

Top 5 Affordability Challenges Experienced by Income and Household Characteristics

■ 25% Above County average
■ 25% Below County average

Affordability Challenges	County	Less than \$25,000	\$25,000-\$49,999	\$50,000-\$99,999	Above \$100,000	Children under 18	Large Households	Single Parent	Disability	Adults (age 65+)
Valid cases	725	84	152	184	164	175	31	42	193	146
I can't keep up with my utilities	12%	30%	19%	11%	1%	17%	23%	33%	20%	5%
I can't keep up with my property taxes	6%	11%	5%	8%	4%	6%	13%	10%	7%	10%
I'm often late on my rent payments	5%	10%	9%	4%	0%	6%	10%	10%	7%	1%
I have bad credit/history of evictions/foreclosure and cannot find a place to rent	4%	18%	8%	2%	0%	3%	3%	10%	10%	1%
I'm often late on my mortgage payments	2%	2%	3%	2%	1%	2%	0%	5%	3%	2%
None of the above	77%	48%	68%	80%	95%	75%	65%	48%	65%	84%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

As shown in Figure II-9c, large households and households making less than \$25,000 are more likely to experience neighborhood challenges. These households, along with single parents, are most likely to report that they live too far from work and there are not enough job opportunities in their area.

Additionally, large households, households with children under 18, single parents, and households making less than \$25,000 are more likely to live in neighborhoods with poorer quality schools. Large households and households with a member experiencing a disability are more likely to report issues with neighborhood infrastructure (e.g., bad sidewalks, poor lighting), and households making less than \$25,000 are also more likely to live in neighborhoods with poor access to transit.

Figure II-9c.

Top 5 Neighborhood Challenges Experienced by Income and Household Characteristics

■ 25% Above County average
■ 25% Below County average

Neighborhood Challenges	County	Less than \$25,000	\$25,000-\$49,999	\$50,000-\$99,999	Above \$100,000	Children under 18	Large Households	Single Parent	Disability	Adults (age 65+)
Valid cases	713	82	148	182	164	173	32	39	188	143
My neighborhood does not have good sidewalks, walking areas, and/or lighting	27%	33%	22%	31%	30%	32%	47%	18%	37%	28%
I can't get to public transit/bus easily or safely	16%	21%	15%	16%	18%	18%	16%	10%	19%	19%
I live too far from work/there are not enough job opportunities in the area	8%	15%	10%	9%	4%	9%	13%	18%	5%	6%
There are no or few grocery stores/healthy food stores in the area	8%	10%	10%	7%	6%	8%	13%	0%	9%	6%
Schools in my neighborhood are poor quality	5%	7%	4%	5%	5%	10%	13%	8%	6%	3%
None of the above	58%	54%	60%	53%	58%	53%	44%	59%	52%	58%

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Experience Finding Housing

This section explores residents' experience seeking a place to rent or buy in the county and the extent to which displacement—having to move when they do not want to move—is prevalent. For those respondents who seriously looked for housing in the past five years, this section also examines the extent to which respondents were denied housing to rent or buy and the reasons why they were denied.

Recent experience seeking housing to rent. Figure II-10 presents the proportion of respondents who seriously looked to rent housing for the county, jurisdictions, and selected respondent characteristics, as well as the reasons they were unable to find housing.

Two thirds of county respondents (67%) have seriously looked for housing in the past five years. The **most commonly reported impediments to housing choice** included:

- Landlord not returning the respondent's call (66%),
- Other (42%). Common responses included:
 - Increase in rental prices;
 - Administrative barriers to accessing housing (e.g. credit check, income requirements);
 - Landlords aren't renting to tenants with housing vouchers and waitlists for subsidized housing are long; and
 - Landlords don't allow pets or charge significant fees.
- Landlord told me the unit was available over the phone but when I showed up in person, it was no longer available (33%).

Jurisdictions with the highest percentage of respondents who seriously looked for housing include Westbrook (77%), Brunswick (74%), and Portland (72%). All three jurisdictions reported that *landlord not returning the respondent's call* was one of their main reasons for not being able to access housing. Nearly half (44%) of Portland respondents that seriously looked for housing also cited that *landlord told me the unit was available over the phone but when I showed up in person, it was no longer available*. Other common reasons for denial articulated by respondents included:

- Rental prices have increased, and available rental listings have decreased, incentivizing landlords to ask more of the potential tenants. One stakeholder noted that "too much money [is] demanded upfront...and the required credit check is biased against immigrants."
- Landlords are no longer accepting housing vouchers. One stakeholder said "I can't apply [to rental listings] because landlords do not accept GA [General Assistance] vouchers." *[Note: The State of Maine includes receipt of public assistance as a protected class from housing*

discrimination. This comment indicates that landlords are out of compliance or are unaware of fair housing laws and rules.]

- Landlords do not allow pets in their units. One stakeholder said that “many landlords will not rent to non-service animal pets, forcing me to choose places to live that are in poor condition or are unfairly priced.”

Among respondents by race/ethnicity, Other Race, Hispanic, and Asian respondents reported the highest proportions of those who had seriously looked for housing in the past five years while the lowest percentage of respondents who reported seriously looking for housing were African American (61%) and non-Hispanic White (66%). The main impediment to housing experienced by Hispanic residents was the *landlord told me the unit was available over the phone but when I showed up in person, it was no longer available* (57%). For Asian respondents, the *landlord did not return calls and/or emails asking about a unit* was the main impediment to accessing housing (86%). Sixty percent of Other Race respondents reported both reasons for being denied housing.

Among respondents by tenure, renters (85%) and those precariously housed (81%) reported the highest rates of seriously looking for housing.

Among respondents by income, households making less than \$25,000 (79%) had the highest rate. The main reason for denial reported by these households was *landlord did not return calls and/or emails asking about a unit* (64%). Other reasons articulated by this population include:

- *“Landlords refuse to accept Section 8 vouchers or want more than what the Section 8 program can pay landlords.”*
- *“Difficulty finding apartments with specific accommodations.”*
- *“Racial bias.”*
- *“Could not pass stringent background checks.”*

Single parents (86%) and households with a member experiencing a disability (71%) also reported the highest percentage of those who seriously looked for housing in the past five years among resident groups by selected household characteristics. Of households with a member experiencing a disability, 65% of those households reported that the main impediment to housing was *landlord did not return calls and/or emails asking about a unit*. Forty seven percent of single mothers chose “Other” as a main reason for not accessing housing. Of those “other” responses, the most common response was the landlord not accepting Section 8 vouchers.

Figure II-10. If you looked seriously for housing to rent in Cumberland County in the past five years, were you ever denied housing?

	Overall Percent Seriously Looked for Housing	Reason for Denial					Other	n
		Landlord did not return calls and/or emails asking about a unit	Landlord said unit was available over phone, but when I showed up in person, it was no longer available	Landlord told me it would cost me more for my service or emotional animal	Landlord told me they don't rent to families with children	Landlord told me they couldn't accommodate my disability needs		
Jurisdiction								
County	67%	66%	33%			42%	166	
Brunswick	74%	70%				60%	10	
Cape Elizabeth	49%	25%	25%			25%	4	
Portland	71%	73%	44%			37%	48	
Scarborough	52%	50%	25%			75%	4	
South Portland	69%	73%	32%	23%		23%	22	
Westbrook	77%	67%				56%	9	
Windham	63%	50%				50%	10	
Race/Ethnicity								
African American	61%	43%	43%			43%	7	
Asian	81%	86%	57%			43%	7	
Hispanic	84%	43%	57%	29%		29%	7	
Other Race	88%	60%	60%				5	
Non-Hispanic White	66%	66%	31%			44%	128	
Tenure								
Homeowner	51%	43%				57%	14	
Renter	85%	70%	32%			41%	122	
Precariously Housed	81%	58%	38%			46%	26	
Income								
Less than \$25,000	79%	64%	38%			49%	45	
\$25,000-\$49,999	66%	62%	31%			44%	52	
\$50,000-\$99,999	73%	74%	32%			32%	38	
Above \$100,000	60%	80%	50%			30%	10	
Household Characteristics								
Children under 18	67%	42%	48%			48%	33	
Large Households	64%	43%	43%			71%	7	
Single Parent	86%	37%	42%			47%	19	
Disability	71%	65%	38%			41%	66	
Older Adults (age 65+)	44%	19%	19%			81%	16	

Note: The "Percent Seriously Looked for Housing" column includes all respondents, not just those who indicated they rent. Blank fields indicate there were not enough responses to report data.

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Recent experience seeking housing to buy. Figure II-11 presents the proportion of respondents who seriously looked to buy housing in the county, by jurisdiction, and selected respondent characteristics, as well as the reasons for denial. As noted above, 67% of county respondents have seriously looked for housing in the past five years.

The most common reasons for denial included:

- Other (44%). Common responses included:
 - **Low housing inventory that doesn't meet a diversity of household needs.** One stakeholder succinctly captured many responses, noting that “nothing is available.” Another stakeholder shared “I could not find housing that was suitable for my accessibility needs.”
 - **Real estate market is too expensive.** One stakeholder commented that “homes are so expensive...I can't afford to live within a three hour commute to work.” Another stakeholder said “I could not afford a home in Cumberland County.”
 - **Poor physical condition of existing housing stock.** One stakeholder said that “[we were shown] neglected and cheaply built dwellings that I had never experienced before.”
- Real estate agent told me I would need to show I was prequalified with a bank (34%); and
- A bank would not give me a loan to buy a home (18%).

For the jurisdictions with the highest percentage of respondents who seriously looked for housing, the main reasons for denial articulated by Brunswick residents included *Bank or other lender would not give me a loan to buy a home*, *Bank or other lender charged me a high interest rate on my home loan*, and *Other*. For those that chose *Other*, they reported that there were no affordable homes for sale. For Portland respondents, the most common reasons for denial were *Other* (44%) and *Real estate agent told me I would need to show that I was prequalified with a bank* (40%). For both Portland and Westbrook residents that chose *Other*, the most common reasons for denial included no affordable homes for sale and not enough housing inventory. Westbrook respondents also pointed to prequalification as a main reason for denial.

For Other Race and Asian respondents, the main reason for denial was *Bank or other lender would not give me a loan to buy a home* (57% and 50%, respectively). Fifty percent of Hispanic respondents articulated that *Real estate agent told me I would need to show that I was prequalified with a bank* was the main reason for denial when looking to buy a home—significantly higher than other races/ethnicities.

Among respondents by income, the main reasons for denial for households making less than \$25,000 were *Other* (53%) and *Bank or other lender would not give me a loan to buy a home* (35%). The most common *Other* responses include price of available inventory is too high and limited amount of homes for sale.

Single parents selected *Other* (50%) and *Bank or other lender would not give me a loan to buy a home* (33%) as their top two reasons for denial. Households with a member experiencing a disability reported *Other* (36%) and *Real estate agent told me I would need to show that I was prequalified with a bank* (34%).

Figure II-11. If you looked seriously for housing to buy in Cumberland County in the past five years, were you ever denied housing?

	Percent Seriously Looked for Housing	Reason for Denial					n	
		The real estate agent told me I would need to show I was prequalified with a bank	A bank or other lender would not give me a loan to buy a home	The real estate agent would not make a disability accommodation when I asked	Only showed homes in neighborhoods where most people were same race/ethnicity	A bank or other lender charged me a high interest rate on my home loan		Other
Jurisdiction								
County	67%	34%	18%				44%	131
Brunswick	74%		29%			29%	29%	7
Cape Elizabeth	49%		14%	14%	14%		57%	7
Portland	71%	40%	10%		10%		44%	48
Scarborough	52%		50%		50%		50%	2
South Portland	69%	40%	13%			13%	53%	15
Westbrook	77%	31%	15%		15%		62%	13
Windham	63%	30%	30%				40%	10
Race/Ethnicity								
African American	61%	20%	20%				60%	5
Asian	81%	25%	50%				25%	4
Hispanic	84%	50%	25%			25%	25%	4
Other Race	88%	29%	57%				43%	7
Non-Hispanic White	66%	32%	16%				46%	102
Tenure								
Homeowner	51%	34%					47%	68
Renter	85%	34%	19%				40%	47
Precariously Housed	81%	36%	29%				43%	14
Income								
Less than \$25,000	79%	18%	35%				53%	17
\$25,000-\$49,999	66%	32%	23%				45%	22
\$50,000-\$99,999	73%	36%	18%			18%	39%	44
Above \$100,000	60%	40%					47%	30
Household Characteristics								
Children under 18	67%	36%	24%				36%	33
Large Households	64%	33%	50%		17%		17%	6
Single Parent	86%	17%	33%				50%	12
Disability	71%	34%	23%				36%	47
Older Adults (age 65+)	44%	13%	13%				65%	23

Note: The "Percent Seriously Looked for Housing" column includes all respondents, not just those who indicated they buy. Blank fields indicate there were not enough responses to report data.

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

Denied housing to rent or buy. Figure II-12 presents the proportion of those who looked and were denied housing to rent or buy for the county, jurisdictions, and selected respondent characteristics, as well as reason for denial. As shown, nearly 30% of county respondents who looked for housing experienced denial of housing. Respondents of color, households with income below \$25,000, single parents and households with a member experiencing a disability have denial rates of 43% or higher. Households making less than \$25,000 (54%) and single parent (53%) respondents report the highest rates of denial.

Among the reasons for denial:

- ***Income too low was a major reason for denial for all groups*** except Brunswick and Cape Elizabeth.
- Another top denial reason among the majority of groups is *bad credit*. Groups with denial rates of 40% or higher for this specific issue include Brunswick and Westbrook respondents, precariously housed respondents, households making less than \$25,000, large households, and households with a member experiencing a disability.
- *Other renter/applicant willing to pay more for rent* was also a common reason of denial for most groups. The impacts are higher for Asian respondents, households making more than \$100,000, and Brunswick and Cape Elizabeth respondents.
- Several groups also indicated *Other* as a reason for being denied housing to rent or buy. The most common responses included being outbid when attempting to buy a home and having a pet that was not an emotional support animal. Another stakeholder noted that a landlord had offered them the home and to confirm the next morning. When they called, they were told that the landlord chose someone else. This respondent noted that they were LGBTQ and “...could have been denied due to that without being told so. There is no way to prove that.”

Figure II-12. If you looked seriously for housing to rent or buy in Cumberland County in the past five years, were you ever denied housing?

	Percent Denied Housing	Total n	Reason for Denial													Other	n
			Bad Credit	Eviction history	Income too low	Too many people in my household	Other renter/ applicant willing to pay more for rent	I have Section 8/Housing Choice Voucher	Needed a disability accommodation	Landlord didn't accept the type of income I earn (social security or disability)	Lack of stable housing record	Real or perceived sexual orientation or gender identity	My race/ ethnicity	I have a service animal/ emotional support animal			
Jurisdiction																	
County	28%	475	30%		41%		34%									26%	129
Brunswick	27%	22	50%														6
Cape Elizabeth	14%	22								67%							3
Portland	28%	214	31%		42%		41%										59
Scarborough	15%	13			50%				50%						50%		2
South Portland	32%	57	33%		28%		28%									39%	18
Westbrook	31%	36	55%		73%		45%										11
Windham	16%	32			60%		40%									20%	5
Race/Ethnicity																	
African American	43%	14			33%				33%	33%						33%	6
Asian	46%	13			67%		50%								33%	33%	6
Hispanic	44%	16			29%	29%			29%	29%	29%						7
Other Race	50%	14			29%		43%									29%	7
Non-Hispanic White	26%	371	33%		41%		34%										96
Tenure																	
Homeowner	13%	186	25%		33%		21%									29%	24
Renter	36%	238	29%		41%		36%									26%	85
Precariously Housed	34%	44	47%		53%		40%										15
Income																	
Less than \$25,000	54%	67	47%		56%												36
\$25,000-\$49,999	29%	102	27%		40%		27%										30
\$50,000-\$99,999	27%	139	24%		34%		47%									26%	38
Above \$100,000	11%	99			20%		50%									50%	10
Household Characteristics																	
Children under 18	34%	119	33%		40%		20%									20	40
Large Households	38%	21	50%		38%												8
Single Parent	53%	36	37%		47%				26%								19
Disability	44%	139	42%		38%		32%										60
Older Adults (age 65+)	17%	65	18%		18%		27%									36%	11

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Experience using housing vouchers. Survey respondents said it is “difficult” or “very difficult” for 90% of voucher holders to find a landlord that accepts a housing voucher.

As shown in Figure II-13, this is related to the lack of supply (lack of landlords who are willing to rent to voucher holders) and the amount of the voucher and current rents. Over two thirds of voucher holders (68%) indicated that *landlords have policies of not renting to voucher holders* and over half of voucher holders (56%) who experienced difficulty indicated the *voucher is not enough to cover the rent for places I want to live*.

Almost half of voucher holders (44%) who experienced difficulty indicated there is *not enough time to find a place to live before the voucher expires* and *can't find information about landlords that accept Section 8*. Twenty one percent of voucher holders who experienced difficulty indicated *Other*. The most common responses reiterated some of the reasons already mentioned by respondents. For example, respondents noted the lack of affordable and adequate rentals available to voucher holders, as well as the voucher is not enough to cover rent, as well as other required costs. One stakeholder noted that “most landlords also want last month’s rent and a security deposit.”

Among respondents by race/ethnicity, Hispanic respondents had the greatest proportion of those with a housing choice voucher (32%). Of those respondents, 83% found it somewhat difficult to find a landlord that accepts a housing voucher. For Hispanic respondents who found it difficult to use the voucher, 60% attributed that difficulty to the *voucher is not enough to cover the rent for places I want to live*. Non-Hispanic White respondents had the lowest rate of voucher holders among groups by race/ethnicity (5%).

Other groups of respondents with higher proportions of voucher utilization include households making less than \$25,000 (29%), single parent households (19%), and households with a member experiencing a disability (15%). For each of these groups, more than 85% of their respective respondents reported difficulty in utilizing the housing choice voucher. *Landlords have policies of not renting to voucher holders* was one of the main reasons cited for not using the voucher.

Figure II-13.
Why is it difficult to use a housing voucher?

Note: n=34.

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey.

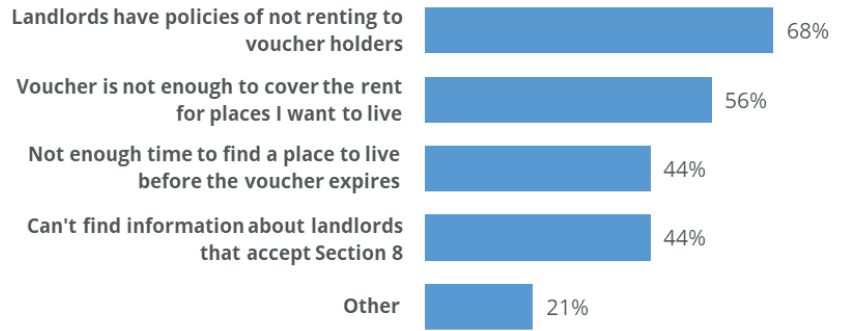


Figure II-14. How difficult is it to find a landlord that accepts a housing voucher?

	Percent with a Housing Voucher				n	Voucher is not enough to cover the rent for places I want to live	Not enough time to find a place to live before the voucher expires	Landlords have policies of not renting to voucher holders	Can't find information about landlords that accept Section 8	Other	n
	Not difficult	Somewhat difficult	Very difficult								
Jurisdiction											
County	6%	10%	32%	59%	41	56%	44%	68%	44%	21%	34
Brunswick	3%	0%	0%	100%	1	100%		100%		100%	1
Cape Elizabeth	4%	50%	0%	50%	2	100%	100%	100%			1
Portland	6%	0%	28%	72%	18	53%	47%	76%	59%	24%	17
Scarborough	4%	0%	100%	0%	1	100%	100%	100%	100%		1
South Portland	5%	0%	25%	75%	4	50%	25%	100%	25%		4
Westbrook	13%	50%	0%	50%	6	33%	33%	33%	33%	33%	3
Windham	0%										
Race/Ethnicity											
African American	17%	50%	25%	25%	4	50%	50%	50%	50%		2
Asian	13%	0%	100%	0%	2	100%	50%	50%			2
Hispanic	32%	17%	83%	0%	6	60%	40%	40%			5
Other Race	13%	0%	100%	0%	2		50%	50%			2
Non-Hispanic White	5%	7%	21%	71%	28	58%	46%	75%	54%	29%	24
Tenure											
Homeowner	2%	0%	50%	50%	6	60%	20%	20%			5
Renter	9%	11%	25%	64%	28	57%	52%	74%	48%	30%	23
Precariously Housed	7%	0%	25%	75%	4	50%	50%	100%	75%		4
Income											
Less than \$25,000	29%	12%	24%	64%	25	67%	38%	71%	48%	29%	21
\$25,000-\$49,999	5%	13%	38%	50%	8	17%	67%	83%	33%	17%	6
\$50,000-\$99,999	2%	0%	100%	0%	4	75%	25%		25%		4
Above \$100,000	0%										
Household Characteristics											
Children under 18	8%	13%	40%	47%	15	69%	46%	62%	31%	15%	13
Large Households	9%	33%	33%	33%	3		50%	50%			2
Single Parent	19%	13%	25%	63%	8	71%	29%	71%	29%	29%	7
Disability	15%	3%	32%	65%	31	57%	39%	68%	50%	25%	28
Older Adults (age 65+)	4%	29%	57%	14%	7	25%	50%	25%	25%		4

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Experience with Displacement

Figure II-15 presents the proportion of residents who experienced displacement in the past five years, as well as the reason for displacement.

- Overall, 19% of survey respondents experienced displacement in the past five years. Among all survey respondents, the **main reason for displacement was “rent increased more than I could pay”** (29%).
- **Single parents reported the highest rate of displacement among all groups** (41%). The primary reason reported by these respondents were *rent increased more than I could pay* (39%) and *personal/relationship reasons* (28%).
- Among respondents by race/ethnicity, **Other Race and African American respondents reported the highest rates of displacement** (31% and 26%, respectively). The primary reason reported by Other Race respondents for their displacement was *rent increased more than I could pay* (60%). African American respondents also reported that the *landlord was selling the home/apartment* and *poor condition of the property* as reasons for their displacement.
- Respondents who are precariously housed have higher rates of recent displacement than homeowners or renters; this suggests that when displaced from a unit these housing-insecure tenants are more likely to couch surf or experience homelessness for some period of time before securing a new place to live.
- Asian households, as well as homeowners, households that make less than \$25,000, and Brunswick and Cape Elizabeth residents are also more likely than other respondents to have been displaced due to the poor condition of the property in which they were living.

For respondents that had experienced displacement, they were asked to identify which city they moved from and which city they moved to. **The most common moves to and from cities included:**

- Moved within Portland (26 respondents)
- Moved within South Portland (5 respondents)
- Moved from Portland to South Portland (4 respondents)
- Moved within Westbrook (4 respondents)

Figure II-15. Displacement Experience and Reasons for Displacement

	Percent Displaced	Total n	Reason for Displacement											
			Rent increased more than I could pay	Personal/ relationship reasons	Landlord was selling the home/ apartment	Landlord wanted to move back in/move in family	Landlord wanted to rent to someone else	Landlord refused to renew my lease	Evicted because I was behind on rent	Health/ medical reasons	Evicted because of apartment rules	Poor condition of property	Property taxes/ other costs of homeownership became unaffordable	Lost job/ hours reduced
Jurisdiction														
County	19%	699	33%	19%	28%									129
Brunswick	21%	29	67%		33%						33%		33%	6
Cape Elizabeth	9%	46	50%			25%				25%	25%		25%	4
Portland	17%	299	36%	20%	34%									50
Scarborough	8%	24	50%					50%						2
South Portland	23%	84	32%		26%									19
Westbrook	23%	47	27%	27%	27%		36%							11
Windham	18%	50	56%		44%									9
Race/Ethnicity														
African American	26%	23	40%		40%						40%			5
Asian	6%	16	100%	100%	100%						100%			1
Hispanic	16%	19				67%				67%				3
Other Race	31%	16	60%		40%									5
Non-Hispanic White	18%	557	34%	16%	24%									103
Tenure														
Homeowner	5%	360	32%								26%	32%		19
Renter	31%	278	30%	23%	26%									87
Precariously Housed	39%	54	50%		40%									20
Income														
Less than \$25,000	34%	85	36%		39%						25%			28
\$25,000-\$49,999	29%	154	37%	19%	28%									43
\$50,000-\$99,999	17%	190	32%	21%	24%	21%								34
Above \$100,000	5%	165	25%			25%	25%					25%		8
Household Characteristics														
Children under 18	19%	177	35%	21%	29%		21%							34
Large Households	24%	33	29%		43%		29%		29%					7
Single Parent	41%	41	39%	28%	22%									18
Disability	28%	195	40%	23%	28%									53
Older Adults (age 65+)	6%	147										38%		8

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Children changing schools after displacement. Overall, for households with children that were displaced in the past five years, **15% of children in those households have changed schools**. The most common outcomes reported among these respondents included *they are in a worse school* (35%) and *things are about the same* (35%) (Figure II-16).

Among respondents by race/ethnicity, Other Race respondents (40%) were the only group to report that being displaced resulted in their children being in better schools. Conversely, non-Hispanic White respondents (11%) were the only group to report that being displaced resulted in their children being in worse schools and that their children have fewer activities. African American and Hispanic respondents reported things are about the same for their children.

Among respondents by tenure, homeowner (37%) and precariously housed (14%) households had the highest proportion of children who changed schools. The most common outcome for both homeowners and precariously housed households was that their children were now in a worse school (43% and 67%, respectively). For homeowner households, 29% reported that their children feel less safe at school and have fewer activities.

Among respondents by selected household characteristics, large households (50%), households with children under 18 (40%), single parents (39%), and households making less than \$25,000 (28%) reported the highest proportions of children who changed schools. For large households, 50% of these respondents reported that school is more challenging for their children. Fifty seven percent of single parents and 38% of households making less than \$25,000 felt that their children were now in a worse school. Thirty eight percent of households with children under 18 reported that things were about the same for their children.

Figure II-16. Children Changing Schools and Outcomes, Displaced Households

	Percent of Children that Changed Schools	Total n	School change outcomes								
			School is less challenging/ they are bored	School is more challenging	They are in a better school	They are in a worse school	They feel less safe at the new school	They feel safer at the new school	They have fewer activities	Things are about the same	Other
Jurisdiction											
County	15%	131	18%	18%		35%			35%	18%	17
Brunswick	17%	6				100%					1
Cape Elizabeth	n/a	0									0
Portland	13%	52				33%			33%	33%	6
Scarborough	n/a	0									0
South Portland	16%	19			50%				100%		2
Westbrook	9%	11		100%					100%		1
Windham	22%	9	50%			100%	50%		50%		2
Race/Ethnicity											
African American	33%	6		100%					50%	50%	2
Asian	n/a	0									0
Hispanic	100%	3							67%		3
Other Race	40%	5			50%				100%		2
Non-Hispanic White	11%	104		33%		44%		22%	22%	22%	9
Tenure											
Homeowner	37%	19				43%	29%		29%		7
Renter	8%	88		20%		20%			60%	20%	5
Precariously Housed	14%	21	33%	33%		67%				33%	3
Income											
Less than \$25,000	28%	29				38%					8
\$25,000-\$49,999	9%	44							67%		3
\$50,000-\$99,999	12%	34	33%	33%			33%	33%	33%	33%	3
Above \$100,000	13%	8							100%		1
Household Characteristics											
Children under 18	40%	35				31%			38%		13
Large Households	50%	8		50%						50%	4
Single Parent	39%	18	29%			57%	29%		29%		7
Disability	17%	54							44%		9
Older Adults (age 65+)	22%	9		50%	50%				50%	50%	2

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Experience with Housing Discrimination

Overall, **16% of survey respondents felt they were discriminated against when they looked for housing.**² As shown in Figure II-17, Hispanic (42%), Other Race (38%), households making less than \$25,000 (35%), precariously housed (34%), Asian (31%), and Brunswick respondents (30%) are most likely to say they experienced housing discrimination. Respondents from Windham and older adults are least likely (5%).

Respondents who believed they experienced discrimination when looking for housing in the county reported when the discrimination occurred. Thirty nine percent of respondents reported that the discrimination they experienced occurred in the past year. Another 39% reported it occurred between 2 and 5 years ago.³ These responses are evidence that housing discrimination continues to be a fair housing issue in the county, and that most potential violations go unreported.

How discrimination was addressed. Respondents who believed they experienced discrimination when looking for housing in the county were asked to describe the actions they took in response to the discrimination. Overall, the most common responses to discrimination experienced by survey respondents were *Nothing/I wasn't sure what to do* (51%), *Moved/found another place to live* (25%), and *Nothing/I was afraid of being evicted or harassed* (22%).

Among top responses for actions taken in response to experienced discrimination, every group reported *Nothing/I wasn't sure what to do* with the exception of large households. Only a handful of groups, including households of color, older adults, single parents, and households making between \$50,000-\$99,999, were more likely to contact either a housing authority, local fair housing organization, or the Maine Human Rights Commission to report their discrimination incident.

Respondents were also given the opportunity to select *Other* and provide more information about how their experience with discrimination was addressed. For those who selected *Other*, several respondents noted that they **did not have the bandwidth, energy or resources to take action against the discrimination they faced**. One respondent wrote that they were “too tired to fight it.” Another respondent said that “many women experiencing homelessness [do] not have the time or resources to pursue action.” After pursuing a remedy, one respondent said they were “evicted anyway.”

² Note that this question applies to all respondents, not just those who seriously looked for housing in the past five years.

³ Eleven percent of respondents reported that the discrimination they experienced happened more than five years ago while 10% of respondents did not remember when it occurred.

Another stakeholder described that they didn't file a complaint because they couldn't prove that discrimination occurred.

Figure II-17. Percent of respondents who felt they were discriminated against and how it was addressed

	Percent who felt they were discriminated against	In the past year	2 to 5 years ago	More than 5 years ago	Don't remember	n	Nothing/ I wasn't sure what to do	Moved/ found another place to live	Nothing/ I was afraid of being evicted/ harassed	Called/ emailed housing authority	Called/ emailed local fair housing organization	Called/ emailed a lawyer/ Legal Aid/ ACLU	Called/ emailed Maine Human Rights Commission	Called/ emailed City office, County office, or human rights department/ agency	Filed a complaint	Other	n
Jurisdiction																	
County	16%	39%	39%	11%	10%	99	51%	25%	22%								96
Brunswick	30%	50%	25%	0%	25%	8	88%	25%								25%	8
Cape Elizabeth	7%	0%	67%	33%	0%	3	67%										3
Portland	19%	41%	33%	12%	14%	51	38%	30%	26%								50
Scarborough	13%	100%	0%	0%	0%	3	100%										2
South Portland	14%	20%	60%	20%	0%	10	50%	20%	40%								10
Westbrook	25%	45%	45%	0%	9%	11	55%	36%	18%								11
Windham	5%	0%	100%	0%	0%	1	100%										1
Race/Ethnicity																	
African American	26%	50%	17%	17%	17%	6	67%	17%	17%			17%			17%		6
Asian	31%	60%	40%	0%	0%	5	100%	20%									5
Hispanic	42%	25%	50%	13%	13%	8	38%	38%		25%			25%				8
Other Race	38%	33%	33%	17%	17%	6	50%		33%	33%							6
Non-Hispanic White	13%	36%	41%	12%	11%	75	49%	31%	24%								72
Tenure																	
Homeowner	8%	27%	50%	19%	4%	26	48%	24%									20%
Renter	21%	43%	38%	6%	13%	53	52%	27%	25%								52
Precariously Housed	34%	50%	25%	19%	6%	16	60%	27%	20%								15
Income																	
Less than \$25,000	35%	42%	35%	6%	16%	31	53%	17%	33%								30
\$25,000-\$49,999	16%	38%	42%	21%	0%	24	50%	29%	17%								17%
\$50,000-\$99,999	15%	32%	50%	4%	14%	28	58%	35%		19%	19%						26
Above \$100,000	7%	33%	33%	25%	8%	12	42%	25%									42%
Household Characteristics																	
Children under 18	17%	39%	32%	19%	10%	31	50%	23%	20%								30
Large Households	12%	50%	25%	25%	0%	4		50%									4
Single Parent	29%	33%	33%	17%	17%	12	58%		33%				17%				12
Disability	28%	42%	38%	10%	10%	52	48%		32%								50
Older Adults (age 65+)	5%	38%	38%	25%	0%	8	57%			29%	29%		29%				7

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Experience of Persons with Disabilities

Overall, 30% of respondents' households include a member experiencing a disability. Of these households, 25% said their housing does not meet their accessibility needs; 75% report that their current housing situation meets their needs.

The three top greatest housing needs expressed by respondents included services onsite to help with mental health/counseling (29%), grab bars in bathroom or bench in shower (26%), and service or emotional support animal allowed (19%). Forty five percent of respondents also selected Other. The most common responses included:

- More accessible housing developments, no stair entrances;
- Better transportation options (and access) for people experiencing disabilities; and
- Better access to behavioral health care and in-home assistance.

Of respondents by jurisdiction, Brunswick (29%) has the lowest proportion of respondents with disabilities whose current housing situation meets their needs. Of these respondents, 40% indicated they would like a reserved accessible parking spot by the entrance of their home. Respondents who selected Other added they would like:

- Allowance of family or chosen caretaker to get paid to care for you;
- More development of small, one-level apartments with accessible amenities (e.g. dishwasher); and
- Address tenants who bully or harass other tenants.

The highest proportion of respondents by group reporting that they or a member of their household experiences a disability were households making less than \$25,000 (66%), Other Race (56%), Asian (50%), African American (43%), precariously housed respondents (42%) and single parents (40%).

Figure II-18. Respondents experiencing a disability and their top three greatest housing needs

	Percent of respondents with a disability	Current housing situation meeting needs	Total n	Grab bars in bathroom or bench in shower	Services onsite to help with mental health/ counseling	Ramps	Wider doorways	Reserved accessible parking spot by entrance	Service or emotional support animal allowed	Alarm to notify if a non-verbal child leaves the home	Fire alarm/doorbell made accessible for person with hearing disability/deaf	Other	n
Jurisdiction													
County	30%	75%	196	26%	29%				19%			45%	42
Brunswick	26%	29%	7	20%	20%	20%		40%	20%			60%	5
Cape Elizabeth	23%	70%	10	33%		33%		33%			33%	100%	3
Portland	28%	78%	79	15%	46%				23%			46%	13
Scarborough	33%	75%	8						100%				1
South Portland	38%	80%	30	80%		60%	40%	40%	40%				5
Westbrook	32%	80%	15	33%	33%				33%			33%	3
Windham	32%	64%	14		25%						25%	75%	4
Race/Ethnicity													
African American	43%	80%	10	50%								50%	2
Asian	50%	75%	8						50%	50%			2
Hispanic	32%	100%	6										0
Other Race	56%	56%	9		50%				50%			50%	4
Non-Hispanic White	29%	76%	161	30%	27%							48%	33
Tenure													
Homeowner	22%	83%	72	18%	27%							45%	11
Renter	37%	72%	99	26%	26%							48%	23
Precariously Housed	42%	62%	21	43%		29%						43%	7
Income													
Less than \$25,000	66%	63%	56	35%	30%							50%	20
\$25,000-\$49,999	33%	73%	52	25%				25%				50%	12
\$50,000-\$99,999	23%	84%	44	33%					33%			33%	6
Above \$100,000	19%	88%	32		67%							33%	3
Household Characteristics													
Children under 18	28%	80%	50		22%				22%			67%	9
Large Households	39%	69%	13	33%								67%	3
Single Parent	40%	82%	17			33%		33%	33%			67%	3
Older Adults (age 65+)	28%	83%	41	57%								29%	7

Source: Root Policy Research from the 2022 Portland/Cumberland County Analysis of Impediments to Fair Housing Resident Survey. Blank fields indicate there were not enough responses to report data.

Solutions offered by Residents

Respondents were asked a series of questions about how to improve their situations related to housing, employment, health, education and neighborhood.

Improve housing security. When asked what could improve a respondent's housing security, the top answers among respondents by jurisdiction, race/ethnicity, tenure, income, and other selected housing characteristics were *N/A; I am satisfied with my housing situation and help me with a downpayment.*

Respondents most likely to be satisfied with their housing situation:

- Households making more than \$100,000, 56%
- Homeowners, 51%
- Residents of Scarborough, 50%
- Residents of Cape Elizabeth, 47%
- Households with children under 18, 41%

Respondents least likely to be satisfied with their housing situation:

- Single parents, 10%
- Precariously housed, 12%
- Renters, 15%
- Households making less than \$50,000, 18%
- Other Race, 19%

Respondents most likely to need help with a downpayment:

- Renters, 37%
- Single parents, 36%
- Residents of Portland, 25%
- Households making less than \$100,000, 25%
- Residents of Westbrook, 24%
- Large households, 22%

Other solutions to improve housing security identified by several different groups included *Help me with the housing search*, *help me get a loan to buy a house*, and *help me pay rent each month*.

Respondents most likely to say they need help with their housing search:

- Precariously housed, 35%
- Households making less than \$25,000, 26%
- Hispanic, 26%

Respondents most likely to say they need help getting a loan to buy a home:

- Single parents, 45%
- African American, 39%
- Precariously housed, 31%
- Renters, 31%
- Large households, 28%
- Households making between \$25,000-\$49,999, 25%

Respondents mostly likely to need help paying rent each month:

- Precariously housed, 31%
- Households making less than \$25,000, 29%
- Brunswick, 27%
- Households making between \$25,000-\$49,999, 26%
- Other Race, 25%
- Renters, 24%
- South Portland, 21%

Improve neighborhood situation. When asked what could improve a respondent's neighborhood situation, nearly every respondent group by jurisdiction, race/ethnicity, tenure, income, and other selected housing characteristics identified *Build more sidewalks or improve current sidewalks*. Other solutions flagged by multiple respondent groups to improve their neighborhood situations includes *Better street lighting* and *none of the above*.

Respondents most likely to say their neighborhood needs more sidewalks or needs to improve current sidewalks:

- Scarborough, 50%
- Households with a member experiencing a disability, 50%
- Asian, 47%
- Households making between \$50,000-\$99,999, 46%

Respondents most likely to say their neighborhood needs better street lighting:

Households with a member experiencing a disability, 39%

- Windham, 34%
- South Portland, 32%

Respondents most likely to not have any suggestions for neighborhood improvements:

- Windham, 44%
- Other Race, 43%
- Cape Elizabeth, 43%
- Precariously housed, 42%
- Single parents, 41%

Additionally, 29% of African American respondents identified wanting more stores to meet their needs (grocery, pharmacy, etc.).

Improve health situation. When asked what could improve a respondent's health situation, the majority of respondent groups by jurisdiction, race/ethnicity, tenure, income, and other selected housing characteristics selected *Make it easier to exercise* and *None of the above*.

Respondents most likely to say they want easier ways to exercise:

- Hispanic, 53%
- African American, 45%
- Scarborough, 43%
- Households with a member experiencing a disability, 37%
- Single parents, 37%

Respondents most likely to not have any suggestions to improve their health situation:

- Older adults, 60%

- Cape Elizabeth, 56%
- Homeowners, 50%
- Westbrook, 50%
- South Portland, 49%

Additionally, 33% of large households identified *more playgrounds for children*, 29% of Asian respondents identified *make it easier to get health clinics*, and 29% of precariously housed respondents identified *access to healthier foods* as solutions to help improve their health situations.

Improve job situation. When asked what could improve a respondent’s employment situation, the majority of respondent groups by jurisdiction, race/ethnicity, tenure, income, and other selected housing characteristics selected *Increase wages* and *None of the above*.

Respondents most likely to say they need a wage increase:

- Single parents, 60%
- Asian, 56%
- Brunswick, 56%
- Renters, 54%
- Households making between \$25,000-\$49,999, 51%
- Households making between \$50,000-\$99,999, 47%
- Hispanic, 47%

Respondents most likely to not have any suggestions to improve their job situation:

- Older adults, 70%
- Cape Elizabeth, 67%
- Homeowners, 57%
- Households making more than \$100,000, 53%
- Windham, 52%

Additionally, Asian (50%) and Hispanic (37%) identified *improve public transportation* and 29% of single parents identified *help paying for job training or college* as solutions to help improve their job situations.

Improve education situation. When asked what could improve a respondent’s education situation for their children, the majority of respondent groups by jurisdiction, race/ethnicity,

tenure, income, and other selected housing characteristics selected *Stop bullying/crime/drug use at school*, *Have more activities after school*, *Better school facilities* and *None of the above*.

Respondents most likely to say stop bullying/crime/drug use at school:

- African American, 32%
- Single parents, 31%
- Windham, 24%
- Households with children under 18, 19%

Respondents most likely to say have more activities after school:

- Households with children under 18, 30%
- Large households, 27%
- Households making more than \$100,000, 18%
- Homeowners, 14%

Respondents most likely to want better school facilities:

- Single parents, 29%
- Households with children under 18, 26%
- Large households, 20%
- Households making more than \$100,000, 18%
- Westbrook, 17%

Additionally, single parents (26%) and households with children under 18 (21%) identified *Make it easier to choose a different school* as a solution to improve their children's education.

SECTION III.

COMMUNITY ENGAGEMENT—STAKEHOLDER CONSULTATION

SECTION III.

Community Engagement — Stakeholder Consultation

This section reports the results of focus groups and interviews with stakeholders working in the housing, planning, civil rights, and supportive services industries.

Primary Findings

Overall, stakeholders described the housing market in the City of Portland and Cumberland County as limited, expensive, lacking supply, and unaffordable. Stakeholders attributed these issues to several factors, including pressures of the market, the COVID-19 pandemic, and the influx of people moving into the county from other parts of the country. One stakeholder felt that the *“housing market is out of equilibrium in economic terms...supply is not keeping up with demand and even though there is a lot of effort being put into the creation of housing, it's still not keeping up with demand.”*

Below are the major themes that were elevated by stakeholders when discussing the current challenges of the housing market.

- *“It's impossible now to look for homes. There is a lot of interest and [people on] waitlists.”*
- *“Demand just far outweighs what we have available.”*
- *“Priced out. Portland is one of the 10 cities in the country that will have price growth higher than national average in the next year.”*
- *“Prices went up 20% last year.”*
- *“Unsustainable” and “Insane”*
- *“If you're person trying to find affordable housing, it's really difficult to find.”*
- *“The housing market has skyrocketed like the rest of the country. Two years ago, you could get a property for \$200,000... now, it's a minimum of \$300,000-\$400,000. It's even further off the scale for waterfront properties.”*

Housing Supply

Stakeholders ascribed the lack of supply to several different factors. One stakeholder felt that the “missing middle”—meaning middle-income households—were being left behind. Stakeholders pointed out that only low to moderate households are eligible for subsidies while market rate housing is too expensive.

One reason for the lack of supply cited was the “long-time trend of urbanization in Maine.” This stakeholder attributed the “slow and steady migration” of people to the greater Portland area as those who grew up here, moved away, and are now coming back, as well as a “significant influx of empty nesters or those in pre-retirement moving back to Maine.” Another stakeholder noted that the population has remained relatively constant in the greater Portland area since the late 19th century, adding that “this is a small area and we don’t have the capacity or the housing stock to take in that number of people.”

Stakeholders described that shifts in demographics are leading to a mismatch between available inventory and the housing needs of different household configurations. One stakeholder noted that the county will get significantly older in the coming decades, adding that “younger people are moving in [to Cumberland County] but this is not keeping pace with the aging of existing residents...there are few housing types on the market to meet the diversity of needs.” This stakeholder felt that the chronic underproduction of diversified housing is affecting households and forcing them to make “significant concessions” about what they actually need. For example, the demand for single floor units is increasing for both older adults and those experiencing physical disabilities.

Another issue identified impacting housing supply was the uptick of people from out of state purchasing second homes. One stakeholder noted this was occurring frequently in more rural areas and that these buyers are “replacing traditional homeowners who live in the community year-round.” Describing the prevalence of out-of-state home purchases, one stakeholder described the housing market as a “system that is biased towards the people who have the means.”

Stakeholders also attributed the tight housing market to the impacts from the COVID-19 pandemic. Not only did this impact the employment prospects of many residents but it also resulted in people moving into Maine, particularly more rural areas, because of the flexibility allowed for working remotely. Stakeholders felt this put extra pressure on the housing market and sped up increasing housing prices.

Another stakeholder attributed the lack of supply in the Portland metropolitan area to corporate interests buying up housing stock, mainly to use as short-term rentals. Several stakeholders described this “unregulated industry” as a major impediment to low supply that is taking a significant number of units off the market. However, one stakeholder felt that the number of short-term rentals in Portland was relatively small and the city does a good of tracking and regulating them. Another stakeholder felt there was solid community

interest to add additional taxes for out-of-state purchasers who aren't putting rental housing on the market.

Regulatory Barriers

Stakeholders identified several regulatory barriers inhibiting housing production in Cumberland County.

Zoning and land use. Several stakeholders articulated that current land use and zoning barriers are inhibiting housing development. In general, many stakeholders articulated that their current city or town zoning ordinances are impediments to getting affordable housing built in their communities. One stakeholder felt that “our ordinances have layers and layers of restrictions that turn developers off.” They added that the developer they are currently working with is having so much trouble trying to get their development through that they most likely won't come back and work with the community.

Another stakeholder felt that their town's zoning ordinance and performance standards are impediments to new development. They felt that even though the comprehensive plan articulates the need for affordable housing, the zoning ordinance is being used to deny affordable housing developments. They added that “if you have super onerous regulations but have a new comprehensive plan that the community agreed on, we should follow the comprehensive plan.” Other stakeholders described their zoning ordinances as antiquated, with one stakeholder stating that “our zoning ordinance has been written around 20th century ideas of what our community should be.”

Minimum lot size was identified by several stakeholders as a barrier to building more housing. One stakeholder felt that their minimum lot size requirements were limiting their ability to develop multiunit housing. Another stakeholder articulated that if their community's minimum lot size was reduced, they could improve affordability outcomes. Currently, “to have a duplex, you would need a four-acre lot, for a quadplex, you would need an eight-acre lot...” This stakeholder articulated minimum lot size as a barrier, but said it is “likely to remain in place since the council is not interested in reducing it.” Height restrictions were also mentioned by several stakeholders as limiting the types of housing that could be built in their communities.

Many stakeholders described that there are limited areas in their cities/towns that allow multifamily housing by right — the majority of land is zoned for single family homes and commercial uses. “It's difficult to find land to build these types of developments.” One stakeholder noted that LD 2003, if passed, would allow structures with up to four dwelling units in any zone where housing is permitted [*Note: LD 2003 was passed by the Maine Legislature on April 27, 2022*]. Another stakeholder explained the difficulty trying to get multifamily housing built when not allowed by right, saying “contract zoning has not proven very useful and re-zones are difficult to obtain and take a long time.”

One stakeholder advocated for limiting development in greenfields to concentrate development in existing built-up areas, adding we “need to build up instead of out and across.” They acknowledged that this would be a major shift in current land use policy. Another stakeholder noted that in Westbrook, more housing is being built downtown but what’s being promoted is first floor retail with housing units above. They argued that because developers don’t want to trigger the elevator requirement, they are limiting the size of the developments. The stakeholder felt that “this was sending the wrong signal to developers.”

Resident opposition. One of the major factors underscored by stakeholders when discussing barriers to increase the housing supply was opposition by existing residents, also known as NIMBYism (not in my backyard). Stakeholders described a lot of community resistance to new developments throughout the region. Reasons provided for the resistance included “placing a high value in preserving the historic and rural character of their communities” and “feeling among the community that they’re growing too fast.” One stakeholder noted that new infill development projects in their community have been rejected based on a concern about “style and culture.”

As described above, even though a city or town’s comprehensive plan might support infill development or affordable housing, stakeholders said community sentiment can overrule these developments. Several representatives of smaller towns noted that there are making genuine efforts to diversify housing types in their communities but that there is “increasing polarization around new development.” A couple stakeholders attributed the pushback to some communities feeling resentful about other people getting things not available to themselves, as well as a general fear of adding “product” to the community.

One stakeholder noted that their town is attracting new economically and culturally diverse population and they are working to send more welcoming and inclusive messaging as a way to increase access to local government. They felt that this approach could help stymie some of the pushback on affordable housing projects. They added that “affordable housing is crucial to the town’s future by helping to spread out the tax base, as well as attracting new businesses.” They felt like embracing this approach and pushing to have this conversation could better communicate the benefits of affordable housing, like that density helps with pool of jobs and adding density doesn’t mean that neighborhoods or subdivisions will be destroyed.

Housing types. Several stakeholders described a current lack of diverse housing types available throughout Cumberland County. Several stakeholders noted that the development of smaller units has been a trend for several years, with one stakeholder noting that “units are as small as possible so they can have more of them.” One stakeholder described a new condominium project in Portland that is made up of all small, one-bedroom units. They added “how does that work for anyone with a kid? [Those units are] not an option for families.” The stakeholder added that smaller units are not helpful

and more developments with 3-4 bedrooms are needed. “There are a lot of multigenerational families.”

One stakeholder felt that some developers do a good job of providing accessible units. However, several stakeholders noted that multi-story condominiums don’t have to comply with ADA requirements, with one stakeholder saying these developments “do the disability community no good.” One stakeholder recalled spending a couple of years touring affordable housing developments and said they had “all bathtubs in senior housing...no accessible showers.” They added that the law does always fit with what people need and there was no requirement forcing them to provide roll-in showers. A couple stakeholders advocated for more resources to help older adults or those with disabilities modify their homes so they could remain in them.

One stakeholder felt that most of the housing coming online is for seniors and not enough housing is being built for families and people under 55. *[Note: The current 2021-22 QAP for LIHTC projects awards more points for housing targeted at both families and older adults].* Several stakeholders shared that developers are primarily building senior housing because they can get more density. These stakeholders felt there needed to be a more concerted effort to encourage/incentivize the development of family-sized housing, as well as the provision of workforce housing. One stakeholder felt that policies need to be set that do not exclude people. “There needs to be more advocacy or more incentives for builders to bring a diversity of units online.”

High housing development costs. One stakeholder noted that there is a lot of demand from people who want to live in the City of Portland; however, the cost of development continually increases due to commodity pricing and regulations. They offered the examples of new regulations (e.g., rent control and green building standards) and more taxes as hindrances to getting housing built. This stakeholder noted “we can change a few of the NIMBYs and zoning but as long you don’t reduce taxes, it will not solve the problem.”

Stakeholders also pointed out that part of the reason housing costs are so high is because of construction costs. One stakeholder noted that “there was a period of time when not a lot of construction was happening, especially in rural areas.” Now, high construction costs and housing costs are impacting localities statewide.

Resource Constraints

Lack of regional coordination to address housing needs. Stakeholders from smaller towns throughout Cumberland County described their current housing stock as limited, expensive, and unsustainable. Stakeholders said that some of the rural communities believe housing issues should be dealt with by the bigger cities. Others noted that some communities will intentionally impede the development of more housing, such as buying land to slow down development. It was noted that the justification of these actions is to protect the “historic and small-town character” of rural areas.

Several stakeholders emphasized that local control is an impediment to getting more affordable housing built. One stakeholder recalled a situation where a developer proposed building a 300-unit housing development that would make most of the units affordable, including 30 units for families. There was pushback from the community on the development and it ended up turning into 60 single family homes.

Policy and program challenges. Several stakeholders described that current prices for rental housing are out of reach for many households, even for those who utilize housing vouchers. A significant number of stakeholders attributed this to stagnant wages. Another reason cited by stakeholders was the increased prevalence of landlords selling their buildings. A service provider noted that historically, their organizations have had good relationships with landlords who help place their clients into units. However, an increasing number of landlords have sold their buildings, particularly to out-of-state investors, and the new owners routinely institute higher price points.

Housing choice vouchers. Stakeholders described both the general assistance voucher program and the Section 8 housing choice voucher program as integral to finding rental housing for lower income families and residents. One stakeholder noted that if an individual does not have a subsidy or housing choice voucher, “cost of rents are just so outrageous.” However, in an increasing amount of instances, stakeholders said households with vouchers still can’t use them because rents exceed what the voucher will cover.

Many stakeholders said that landlords are now less likely to rent to voucher holders because they can command a higher market rent than the voucher will cover. One stakeholder described this situation as “...a way of profiteering and marginalizing low income people from access [to housing].” They added that this has been happening consistently for years but has been intensified due to the pandemic with people losing their jobs and an increasing number of people moving into the county. One stakeholder noted that current fair market rents, as determined by HUD, are out of whack with the reality of the housing market and make it very challenging for voucher holders to find housing.

Stakeholders also noted that the lack of supply impacts households with vouchers because of the time constraints forced on households to find housing. They noted that in this current rental housing environment, “120 days [to find a place to live] is not long enough...it is really hard to find a home and when they lose their voucher, they rejoin the waitlist.” Other stakeholders noted that there is a lot of people “couch surfing or doubling up”, which puts their relatives or friends who have a voucher at risk of losing their voucher.

Supportive services. Stakeholders also spoke to the need for more supportive services for households living in transitional or permanent supportive housing settings. Stakeholders described that the current level of services available is not enough to meet demand. One stakeholder noted that “whereas before [the housing crisis] the emphasis on

service providers was on avoiding duplication, now we are trying to act as a network to try and meet the increasing demand.”

Another stakeholder noted that the availability of long-term supportive services is greatly lacking. Most of the funds available for supportive services are short-term in nature, with one stakeholder articulating that “service providers are really only doing a warm handoff, really only staying with people for six months — that’s too short. We are lacking a longer time support system and intervention.” One stakeholder felt that to really ensure people are stable in their housing situations, “you need someone to step across the threshold to see the condition of the unit.” Stakeholders felt that while more resources are helpful, what’s really needed is more case manager positions to help with continuity of care for residents utilizing support services. One stakeholder felt that having more case manager positions would provide residents who need intensive services more attention and specialized care.

Stakeholders were asked if the need for supportive housing has grown. One stakeholder responded, “I think it has grown, especially during COVID. A lot of people relapsed, and a previous administration dismantled the state’s supportive services infrastructure when a wave of opioids hit at the same time.” This stakeholder also felt that more people are experiencing homelessness on any given day.

Stakeholders described that with the changing of gubernatorial administrations, there’s been more support and focus on treatment and recovery (a greater support structure in greater Portland compared to the county). One stakeholder noted there’s been an increase in recovery residences (e.g., sober houses), where in some instances, they are paired with supportive housing services. This stakeholder noted “some of this work is happening but there’s still not enough. Sometimes we can only get one or the other.” Others added that there are still people who are actively using and have nowhere to go. A major challenge is that recovery or treatment options are not available to them or they don’t want to utilize them.

One stakeholder noted that their organization use to acquire small multifamily buildings with state and federal resources and rehabilitate them into supportive housing. They noted that this option is “...disappearing for us because it is so cost prohibitive.” They added that huge cash-only purchases go through just hours after the listing goes up. The stakeholder said that it takes six months on their end to get everything lined up to purchase a building, adding they’re at a “competitive disadvantage.”

One stakeholder estimated that the region needs to build about 1,000 new affordable housing units annually, as well as at least 100 permanent supportive housing units per year. Currently, only twenty units are currently being built annually. This stakeholder noted that the biggest issue for building permanent supportive housing is siting it.

Several stakeholders also mentioned “service center” polarization, where Portland “bears most of the burden” by offering the majority of supportive services available throughout the region.

Consequences of limited supply. Several stakeholders a variety of consequences stemming from the lack of housing development throughout the county. Stakeholders described long waitlists for Section 8 housing, LIHTC developments, and public housing as a consequence of the lack of supply. Speaking about the demand for senior housing, one stakeholder described some waitlists as long as six months to two years and that it’s common to get around 50 applications for one unit.

Another consequence of the lack of supply in greater Portland is that more people are forced to live in precarious situations. One stakeholder said, “We are seeing more seniors and children living in motels and living in their cars.” Others noted people, particularly low income families and new Mainers, are forced into living in unsafe situations, such as units that have mold or those that are infested with pests, rodents, or bed bugs. Stakeholders noted tradeoffs families are forced to make, usually prioritizing the need for housing at the expense of other basic needs (e.g., food, healthcare).

One South Portland stakeholder noted a market analysis completed by the City that forecasted what the housing market will look like in 2030. The results found that households making less than 60% of area median income will struggle the most trying to find both rental units and homes for sale. The forecast projected cost stress on lower income families to continue to increase into 2030. They noted that anyone looking to transition from renting to ownership can’t do it, adding “anyone looking to move to a new market for jobs, transitioning from rural to more urban setting, or looking to upsize or downsize can’t find housing.”

Another stakeholder felt that homeownership is “so out of reach” for lower income families that resources should be focused on ensuring access to affordable rental housing. They added that for someone making minimum wage, there are too many barriers to overcome to purchase a home in the current housing market.

Several stakeholders noted that increasing home prices are now ubiquitous around the county — no longer just impacting the urban areas of the county. One stakeholder noted that the poverty rate is dropping around the county, but they attributed this to low income families being pushed out due to the lack of rental and sales housing inventory [*Note: The current poverty rates for individuals (8%) and families (4%) have each decreased three percentage points since 2012*]. Another stakeholder echoed this sentiment, noting that the poverty rate looks better but less people are being housed and there are less resources to help these households. Speaking about single mothers, a service provider noted that “they cannot find rental housing and end up spending \$200/night in a hotel. Some families just end up leaving Maine.

A few stakeholders noted that because of the tight rental market, scamming prospective renters has become more prevalent. This has made them more timid and less likely to use common websites to search for housing (Zillow, Craigslist, Facebook, and Apartments.com). One stakeholder described that a common situation is where an ad requires the prospective tenant to send a non-refundable deposit before letting them submit an application. They noted that because the housing market is so tight, people are more likely to take these chances and end up losing their money.

Disproportionate Housing Needs

Immigrants and asylum seekers. Stakeholders described immigrants and asylum seekers, or new Mainers, as more likely to face barriers or challenges to accessing housing. One major logistical challenge facing asylum seekers is not having permanent status (e.g. social security number), rendering them ineligible for the Section 8 program. However, asylum seekers are eligible for general assistance vouchers. Stakeholders also spoke about other barriers, such as not having the traditional prerequisites (e.g. rental history or landlord references) or financial resources to rent a home in the United States. Additionally, one stakeholder emphasized that these families deal with a lot of stress having to juggle figuring out where they're going to live and also sorting out their immigration status.

Another stakeholder felt language was another barrier for new Mainers trying to access housing, particularly trying to communicate what type of housing best fit their needs. The stakeholder felt that because of language barriers, new Mainers rely both on "formal and informal pathways" to help find housing, adding that "I bet a lot [of finding housing for these families] is happening organically. This stakeholder wanted to know what gaps existed in helping these families find housing and whether policies need to change or more resources needed to be focused on assisting new Mainers.

It was noted that because immigrants want to live in urban places, they usually must settle for housing that is in substandard condition. One stakeholder described that Portland has a large undocumented workforce, is a resettlement location, and tier one city for asylum seekers, magnifying the lack of housing supply that is available and affordable. Another stakeholder expressed there is a perception among some immigrant groups that others receive more support than they do, adding that "this issue could be a challenge in the future."

Persons with disabilities. Another stakeholder noted accompanying the demand for more diverse housing types will be a demand for more services. They noted that over 30% of people in Maine experience a disability, adding that "when you consider 1 in 3 is disabled, as well as account for the urban/rural aspect, you have to consider that Cumberland County will have a greater demand for services (e.g., access to hospitals) compared to other rural areas."

Pertaining to people with disabilities, stakeholders spoke mainly about discrimination related to assistance animals, including buildings with no pet policies. Stakeholders identified that the main barrier is typically the property management/landlord not understanding their obligation under the Fair Housing Act. Stakeholders mentioned that when people with disabilities are looking to make reasonable accommodations to their unit, they are usually looking for resources. One stakeholder recalled encountering resistance from landlords and condominium associations when trying to install ramps. However, when residents tell them it's the law to provide reasonable accommodations, "it usually goes through."

One stakeholder recounted that a person with a disability was denied the opportunity to look at an apartment on the first floor due to "maintenance issues". Both the stakeholder and prospective tenant felt that this was an excuse for the landlord not to show the apartment. Another stakeholder mentioned that Disability Right Maine serves a lot of people with disabilities, particularly those with mental health challenges and intellectual and developmental disabilities. This stakeholder spoke to numerous barriers that these individuals face trying to find and stay in housing. They added that they've "definitely seen cases where people are sent to the emergency room because they don't want to be dealt with by providers at their care facility or group home."

Reasonable accommodations and accessible housing. One stakeholder felt that in terms of public or subsidized housing, they've observed good success in providing reasonable accommodations. However, several stakeholders shared that "our housing stock is the oldest in the country" and is difficult to modify. One stakeholder said that "going forward with new projects, we need to incorporate visitability and universal design into our housing developments." They attributed the lack of accessibility features in housing developments to current building codes, adding "building code could have a greater mandate and provide a variety of accessibility features."

One public housing authority representative described that when building out their units, they will add ADA-convertible units to their development on top of the required percentage of units that must be accessible. They noted that when someone who needs an accessible unit isn't currently living in one but needs an accommodation, they can more easily respond to that need at less cost.

One stakeholder noted that most people who need reasonable accommodations don't have money to make it happen. This stakeholder asked "where does the money come from to make modifications. If a homeowner has a huge mortgage, many don't want to take a secondary loan to make modifications they need." Another stakeholder suggested low-interest loan programs as a strategy to support modifications for lower income homeowners. Another stakeholder noted how much more expensive it is to make modifications to a unit once it's built.

Several stakeholders spoke to resources and programs available to help pay for home modifications, including ramps (City of Portland) and general home modifications via tax incentives (State of Maine). However, a few stakeholders spoke about the income qualifications for these programs and described “a gap of households who make too much money but can’t afford the modification on their own.” One stakeholder described the Comfortably Home Program through Maine Housing, where their facilities department adds accessibility features to the person’s home so they can live in their home longer. Stakeholders felt like this was a successful model that should be replicated while also simultaneously taking pressure off public housing waitlists.

Stakeholders shared that while visitability construction practices are slowly becoming more prevalent in the greater Portland region, there’s still a long way to go. While Avesta and Community Housing of Maine use visitability practices in their construction processes as well as most of the public housing authorities and a few private developers working on cooperative developments, stakeholders articulated that no jurisdiction in Cumberland County currently has an adopted visitability policy.

One stakeholder voiced that there is actually a considerable amount of accessible housing stock but people who don’t have disabilities are placed in them. They felt that if accessible units were prioritized for the people who need them, there wouldn’t be as much demand.

Unhoused populations. Stakeholders described several challenges facing unhoused populations, particularly impacting people experiencing mental illness and single parents. One stakeholder articulated that there has been a large influx of people seeking shelters, mainly driven by the COVID-19 pandemic and asylum seekers. This stakeholder noted that to meet the demand for shelter space, shelter providers had to look outside the city of Portland to adjacent municipalities. They added that two 24/7 shelters have been operating since the beginning of the pandemic, as well as overflow space (contract through Maine Housing using FEMA funds with a hotel). They noted that neighbor complaints about the overflow space of the hotel became prevalent and the owner will now only let people stay through May 2022.

Stakeholders spoke about the challenges faced by people experiencing mental health challenges trying to find housing, as well as programs and services in place to assist them. One stakeholder described it as a cyclical issue, saying “the lack of housing worsens mental health, which in turn decreases the chances of finding housing.”

One stakeholder noted the housing retention program at the City of Portland has been relatively effective. For those who stay in the shelters for over 180 days, program staff support their transition out of the shelter and continuously follow-up with them. This stakeholder noted that “support doesn’t always work but we have had this program for a number of years now and have pretty low turnover rate.” It was noted that a factor in the success of the program is having willing landlords work with them. However, more

recently, a number of landlords they've worked with have sold their buildings. A couple of stakeholders attributed this trend to raising property taxes.

One stakeholder spoke about the shift of social services moving away from downtown Portland and the potential challenges that might create in the future, mainly access for those who currently live in downtown. They also attributed the shift of social services moving out of downtown to increasing rent prices and gentrification. This stakeholder described the shelter's growing lack of capacity and described it as a "reconfigured three-story building and garage not intended to serve people." They said there was a lot of community pushback about the location of the new shelter (located in Riverton), adding "any time you move a large number of folks to a new space, you're going to face resistance."

When asked about disparities among unhoused individuals, one stakeholder did not feel like any group experienced more difficulty than another. They noted that "with COVID, it's been especially difficult for those who need supportive services...service reductions are really impacting them and it's difficult for them not having those same spaces to go to for help."

Administrative barriers to finding housing. Stakeholders described several administrative barriers disproportionately impacting residents, particularly low income families and New Mainers, in finding housing. One of the major barriers for immigrants, refugees, and asylum seekers is not having the traditional "prerequisites" available to them that landlords traditionally require. As one stakeholder described, "all of the requirements to get into a rental home pose barriers for the people we assist. Income requirements, criminal background checks, credit history, and rental history and past eviction records."

Because rental references and work history are required criteria to rent, asylum seekers are automatically excluded from applying for the unit. Additionally, because asylum seekers don't meet the income requirements, they are also forced to find someone with an income high enough to co-sign. One stakeholder noted that criteria and treatment for how asylum seekers can qualify for housing varies by type of asylum case.

Stakeholders also spoke to the financial barriers faced by these populations when applying to rent. One noted that it's a common practice in Maine where landlords require \$25-50 per application fee, justifying the fee to administer a background check. However, there is no regulatory oversight of this practice. For example, you can collect fees on 100 applications but selectively pick the application fee you want to process. This is a major impediment for low income families trying to find housing. The stakeholder noted "if [a landlord] owns 10 properties and requires an application fee for each property, that limits the options of low income families."

One public housing authority stakeholder noted that historical impediments for accepting a potential tenant included bad landlord history, bad credit history, and criminal history.

However, they noted that they have refined their approach when considering criminal history and assess each applicant on a case-by-case basis.

Another barrier identified is landlords who require a deposit for first and last month's rent, "which is too much cash up front for many tenants." Additionally, stakeholders described those deposits are asked for even before tenants are approved for units. One stakeholder noted that "tenants have to wait between 2-4 weeks to get their deposits back, which makes it difficult to continue their [housing] search while they wait for their money back."

Other barriers identified by stakeholders included only having rental applications available online, which makes it difficult for seniors who often are not computer literate and/or do not have internet access. Language accessibility and the complexity of the application process were other issues identified by stakeholders.

Several stakeholders also reported that some landlords do not want to work with organizations that provide housing subsidies because of the stigma of renting to particular populations, as well as the "extra work to get a unit approved and perceived administrative burden of the programs."

One stakeholder mentioned Project Home, which supports tenants find housing who might otherwise be screened out of the tenant application process due to application fees, credit scores, tenant histories, or move-in costs. They felt this model should be replicated or scaled up to increase access to housing for new Mainers. Other stakeholders felt that local governments should create policies to allow more flexibility for new Mainers trying to find housing.

Housing Discrimination

Overall, stakeholders described that housing discrimination occurs, particularly for New Mainers, people with disabilities, and families with children, but it is hard to prove and difficult to document. Because of the difficulty in collecting data on discrimination, stakeholders felt it obscured the true impact of how discrimination affects homeownership and renters. While not a protected class under the Fair Housing Act, several stakeholders felt that economic discrimination was also at play.

National origin. Stakeholders also noted that landlords routinely ignore maintenance and repair requests from immigrants. Stakeholders felt there is "a lot of discrimination [that occurs] ...some landlords just do not want to rent to new Mainers."

Source of income. While not protected under the federal Fair Housing Act, receipt of public assistance is protected under the Maine Human Rights Act. Stakeholders felt that less and less landlords are willing to accept vouchers. One stakeholder noted that in 2016, "things were awful. Unhoused people, particularly minorities, got rejected all the time." Another stakeholder noted that people with general assistance were asked to provide security deposits by some landlords, which is not allowed. Stakeholders reiterated that

more and more landlords are selling buildings, and renters end up getting evicted. One stakeholder felt landlords are hesitant to accept emergency rental assistance and housing choice vouchers because the “payments take a bit to process.”

Other forms of discrimination. One stakeholder noted that they are not aware of any discrimination happening explicitly, “short of what is happening historically.” This stakeholder felt that the most significant discrimination happening is economic, articulating that people who the market discriminates against (e.g., those with low incomes, criminal history) are the ones who have struggled economically and are viewed as high risk. This stakeholder noted that “these are the people who are being shut out [from the housing market].” Requests for first and last month’s rent, as well as security deposits, are huge impediments for lower income families, particularly large families and new Mainers. They noted that landlords perceive larger families as riskier due to “increased chance of damaging the unit.”

One stakeholder noted that the most prevalent discrimination they are aware of is policy discrimination. They pointed to issues with criminal history being part of a rental application, noting that people of color are disproportionately impacted by the criminal justice system. They added that having this as a requirement for a rental unit is “de facto racism and discrimination.”

Access to Opportunity

Transportation challenges. Stakeholders were asked to share their perspectives on the transportation system in Cumberland County. Overall, stakeholders articulated the need for a more reliable, accessible, and efficient transportation system, both in Portland and throughout the county. Below is a sampling of comments from stakeholders on their experience with the transportation system:

- *“Transportation is a challenge; you can only go where the Metro goes and busses are not reliable. This restricts the market where people can search for housing and pushes people to stay in the metro area where costs are higher.”*
- *“Transportation outside the metro area is basically lacking.”*
- *“Opportunity to walk to store may not be there for everyone.”*
- *“The further you get from urban areas, the less services are available. It’s very hard to find transportation and childcare.”*
- *“There is no public transit really. It is so minimal and antiquated. It’s easy for policy makers to consider what we have quasi feasible to get to work, but it is impossible for someone to get to point a from b in a timely manner. [It feels like] transit is not designed to serve people.”*

- *“The immigrant population comes from places with more reliable public transit...the public transit system here leaves them more isolated.”*
- *“We need more bus shelters. The climate in Maine makes them necessary. Our transportation system is fractured, and the bus systems do not collaborate with each other. We need a Cumberland County Transit System. Maybe we could have less routes but make them for consistent and often.”*
- *“Places like Windham, there is land to build housing but no public transportation to get there. Lots of people building housing for seniors, it’s easier to get permits, but they’re totally missing the boat on housing for low-income families.”*
- *“We need working class housing with transportation. More people would move out further if they could get around in a better public transportation.”*

Several stakeholders spoke to the limits on the transportation system, particularly accessibility. One stakeholder noted for people experiencing disabilities, “it is difficult to find a place to move that is within the range of paratransit.” Because the paratransit system only serves households within three quarters of a mile of the system, it limits housing options for those who rely on paratransit services. Additionally, one stakeholder felt that the access to paratransit throughout Portland is fair, but “the service is still limited.” They added that needing to schedule in advance is another barrier to utilizing it, noting that “accessing community on demand is difficult.”

Additionally, several stakeholders spoke to the challenges for people experiencing disabilities when it came to using transportation during the winter season. The lack of snow removal on sidewalks is a major barrier for people experiencing disabilities to access transportation. As one stakeholder described, “...just because you have a bus that comes by your house does not mean you can get to it.” Another stakeholder recalled seeing people walk in traffic on a bridge because the “street plow comes and covers the sidewalk with slush.” Another stakeholder added that “in winter, it’s extremely difficult as a wheelchair user to depend on the clearing of sidewalks. This puts a greater demand on paratransit if sidewalks are not shoveled on fixed routes.” One stakeholder noted that Greater Portland Metro has an “Adopt-a-Stop” program for bus stops because GP Metro does not shovel bus stops. This stakeholder added that “now there are bus shelters, which are mostly shoveled, but this is not the case everywhere.” Another stakeholder noted that it’s extremely difficult for people with disabilities to move their car during a snowstorm and are at higher risk of getting it towed. They suggested having a location for people with disabilities to keep their car for an extended period of time without the threat of having it towed.

Some stakeholders noted the diversity of efforts communities are taking to address their transportation issues. One stakeholder noted that Freeport hosted a Design Week, where conversations were had about enhancing connections in neighborhoods that don’t have

sidewalks. A few stakeholders were complimentary about the efforts taken by GP Metro to enhance the system, with one stakeholder saying, “they’ve done a good job expanding routes for transit before COVID, hopefully it will come back strong.”

Another stakeholder mentioned a pilot program in South Portland that has a network of drivers who volunteer to take seniors to their appointments and on errands. However, they noted that accessibility of vehicles is a hindrance to more people utilizing the programs. They added that if the cars were made accessible (e.g., ramp into the van for a wheelchair), the program would be much easier to participate in.

One stakeholder had a broader comment about the frustration experienced by people with disabilities in trying to use the transportation system in greater Portland. They noted that “any friction people experience [using the system] will result in frustration and the result will be that they’re less likely to utilize [the system].” Another stakeholder advocated for adding visual and audible technology on buses to make them more accessible.

Another issue stakeholders flagged with the greater transportation system was the proximity to services and location of housing. One stakeholder added that “even if you can find housing, it may not be close to services or transportation.” Another stakeholder added that if housing and transportation is not “co-mingled”, it’s difficult to access services, such as childcare or job training. One stakeholder noted that in South Portland, most, if not all, services are located in the eastern portion of the city. They felt that “pretty direct policy statements about established neighborhoods” have had an outsized influence on development patterns in the city, which has made it more difficult to co-locate housing and services.

Another stakeholder speaking about the bus system in South Portland articulated that “we don’t have the resources to make the bus system work for all.” This stakeholder added they do have high frequency bus service but it’s not located in great proximity to employment, adding that the “[the system] is so dispersed that people spend too much time on buses to get to jobs. It gets really complicated [for people taking the bus] with two or more jobs.”

One stakeholder who lives outside of the Portland area estimated that “99% of [their] community has cars.” They noted that even the local food pantry and community center is not on the public transportation line, adding we “haven’t developed walkable communities.”

One stakeholder who lives in Yarmouth noted that the busses usually run on one-hour intervals. Participants agree that decreasing the interval time to half an hour would allow more residents to take advantage of the routes. The town is also currently working on increasing biking and pedestrian connectivity within the town and across the region. Another stakeholder noted that the largest employer in their town is located off the highway and therefore most workers drive to it. Demand for the bus route was deemed

too low and the bus service was cancelled. The town is currently exploring other public transit options, including an on-demand system.

Another stakeholder described that for people with disabilities, the lack of transportation outside of Portland is an impediment to their ability to move around the county. This stakeholder added that if you "...go out 10 miles, away from Portland, there are no sidewalks, no transportation lines, and nothing is accessible to get to. It's extremely difficult for people with disabilities to get around and access to ancillary places is limited." One stakeholder said that more recently, because of the limited nature of the transportation system, the "cost of gas to search for home in more affordable areas [has become] an issue."

One stakeholder spoke to the inherent tension between where people want to live, where it's convenient, and where it's a "disadvantage" to live. This stakeholder noted that AFFH requirements aim to deconcentrate poverty but for a lot of households, these areas are their communities and where services are located. Another stakeholder felt that moving services out of downtown was a veiled way to "push poor people out." They added that "we have to fight it. It's where transit is. They want to put people out in Riverton, but it's more isolated and takes 45-60 minutes to get downtown. Apparently from analyzing census tracts, it looks like a better place to live."

Employment and childcare challenges. Several stakeholders spoke to the link between the lack of affordable housing and the impact on employment and access to childcare. One stakeholder commented that it was unfortunate that public, private, and nonprofit sectors haven't come together to address housing issues in the state because it's also impacting the workforce. This stakeholder emphasized that the "State [of Maine] needs workforce."

One stakeholder felt that because of the lack of services available in more rural areas of the county, there are few, if any, affordable childcare options. Another stakeholder said there were plenty of employment opportunities available in the greater Portland region but that "you need childcare in place to take advantage of them." Another stakeholder added that families, particularly single mothers, with children who have medical conditions that don't allow them to be in daycare cannot join the labor force.

One stakeholder noted that there is currently demand from businesses looking for workers to fill positions, particularly small businesses. They emphasized that "we do not have a challenge with unemployment, we have a shortage of labor." One stakeholder noted that the State is aiming to add 75,000 workers over the next 10 years and that without immigration, the State would not be growing. However, they noted that there is a skills mismatch between the asylum-seeking population and employment opportunities, adding that many of these people have many more skills (e.g., doctor, nurse) than the jobs that are available to them (e.g., lower-wage tourism jobs). Even though they have credentials in their native country, they're not able to practice their profession in the U.S.

With the increase in foreign in-migration, stakeholders spoke about how this has impacted the limited rental housing stock where most new Mainers want to live. One stakeholder said that “much of the rental stock in these communities is composed of smaller attached homes that are currently taken up by higher income renters waiting to buy larger single-family homes.”

Several stakeholders noted that employment patterns have changed significantly over the past two years. They’ve also seen an increased demand for workforce housing. In addition, expanded access to internet and the availability to work remotely has made some of the more rural areas in Cumberland County more appealing to out-of-state workers, which has led to an increase in domestic in-migration. Participants noted the expansion of the Roux Institute in Portland will further increase demand for housing in the area.

One stakeholder felt that while there are employment opportunities available, people are having trouble finding quality jobs. A lot of immigrant workers have skills suitable for better jobs but there are many barriers in utilizing those skills. This stakeholder also spoke to the poor conditions faced by undocumented workers. They noted that not only have they been working in Maine for a long time under bad conditions, but during COVID, were primarily in jobs (e.g., seafood processing) where they had to keep showing up in person.

One stakeholder articulated that 40% of school-aged Hispanic children were chronically absent from school due to worker shortages they were filling. They added that immigrant populations are trying to remain stable and cannot plan for careers. However, with the labor shortage, businesses are now starting to look at immigrants to fill higher-skilled positions. Participants noted increased technical assistance and career training would be beneficial for new Mainers to take advantage of the labor market. One stakeholder articulated that people experiencing disabilities are often working lower paying jobs and are on the lower end of the socioeconomic scale.

Solutions offered by Stakeholders

Stakeholders shared numerous suggestions about how to address the housing challenges in Cumberland County. One overarching theme expressed by a significant number of stakeholders was more regional cooperation and collaboration among public, private, and non-profit organizations, as well as urban and rural areas.

Build more housing near transportation and services

- One stakeholder felt that the City of Portland should focus housing development on commercial corridors to allow for more households to live in proximity to services and to increase transit use. They added that a lot more funding would be needed to build at a large scale.
- One stakeholder suggested linking the state point system for highway funding to local projects for housing development along those corridors. They added that to make it effective, “for federal pass-through funding, we’ll give you extra points for the roads that have affordable housing along its frontage.” They also noted that Maine Housing Authority currently directs affordable housing into urban centers, however, “if the point system for transportation and housing is linked holistically, a lot more communities would be seeking out housing projects.”

Build more accessible housing

- One stakeholder felt incentives would be more a more effective approach to get housing built as opposed to mandates. They pointed to the State of Vermont’s accessibility requirements — which exceed federal law — as a model to replicate. The stakeholder added that “[building accessible housing] does not have to cost more...we just have to change our mindset and know that when we design to the bare minimum, we are missing a huge opportunity.
- Stakeholders spoke about the lack of education and knowledge about the benefits of accessible housing and wanting there to be a more intentional push about spreading awareness. One stakeholder added that if more people thought about accessibility, not just in housing but in everyday life, it would make the lives of people experiencing disabilities much less challenging. Another stakeholder added that “we just need to [build accessible housing] so people can see it’s not what they think it is and it benefits all of us. We are all temporarily able bodied.”
- One stakeholder noted that Maine has a long history of getting bonds passed. They suggested creating a bond to incentivize developers to help fund more universal design units.
- Another stakeholder advocated for more funding for an adaptive equipment loan program, which can be used to purchase equipment or technology that improves independence, safety and quality of life for a person experiencing a disability.

Land use and zoning reforms

- Several stakeholders advocated for reducing minimum lot sizes, revising height restrictions, allowing multifamily housing by right, and adopting inclusionary zoning ordinances.
- One stakeholder noted that a lot of the county's housing issues are associated with "chronic underproduction." They noted that it's worth analyzing whether there are artificial limits on housing opportunity because of growth controls and land use. They suggested taking legislative action to ensure flexibility is preserved.
- Several stakeholders pointed to the State of Maine's Commission to Increase Housing Opportunities by Studying Zoning and Land Use Restrictions and advocated for the state to adopt those recommendations.
- Zoning that allows for infill and more density on transportation byways, allowing for "housing hubs" to be identified on key transportation routes.

Innovative solutions to build housing

- One stakeholder suggested using tax increment financing (TIF) to help finance affordable housing development. They added that a lot of TIFs are about to expire or have expired, and towns should "re-up" them with additional restrictions for the money to go towards affordable housing.
- Several stakeholders wanted to see more energy and funding put towards the development of more co-operatives and land trusts. They felt this would be an alternative solution for low income families and people who work minimum wage jobs who cannot afford to buy a home under the current system.
- One stakeholder advocated for affirmatively inclusive policies in the QAP for LIHTC projects, wanting to see a set aside between 5-10% of units for supportive housing.
- One stakeholder advocated for closer coordination between local governments and public housing authorities. They stressed the need to carefully consider the appropriate balance of regulation and incentives to "create the right environment for developing housing that is needed." Because public housing authorities can create housing, they felt that working in tandem would be effective in getting housing built. They added that resources are limited and cannot meet all needs.

Landlord trainings

- Several stakeholders advocated for more education and training for landlords on housing choice voucher programs. They felt that this would reduce the stigma around renting to voucher holders and would help clear up misconceptions about the programs.

- One stakeholder advocated for more incentive programs for landlords to encourage them to rent to people with housing vouchers. Another stakeholder mentioned MaineHousing's efforts to encourage landlords to participate in their program by offering \$750 for each new voucher, as well as deposit assistance and insurance against damages. There's an available source of money for damages, as well. They said that the program "was having a positive effect."

Other solutions

- Several stakeholders wanted to see more funding from the State of Maine to address the affordable housing shortage. One stakeholder did note that Maine Housing is tasked with administering and allocating \$80 million of credits to affordable rental housing developers between 2021 and 2028. One stakeholder noted that "we have received no help [from the State] with the asylum seekers and just closed two hotels." Another stakeholder felt that there is an inequitable distribution of resources at the state level, noting that "towns that compose 75% of GDP get the least resources while more resources go to more rural places."
- One stakeholder felt there needed to be more fair housing education for community planners at the local level. They expressed that it was important that fair housing policy be widely understood so unconscious bias doesn't impact local policy and lead to unintended outcomes.
- One stakeholder also felt that real estate agents need more education and training on fair housing issues to increase their awareness about how to avoid violating the FHA in their practices. They suggested approaching the Maine Real Estate & Development Association (MEREDA) to see if they would provide programming on fair housing policy/issues at their annual conference.
- Another stakeholder advocated for implicit bias training for elected officials to bring more awareness about how it affects policymaking. They felt that these trainings would help increase awareness of why affordable housing is economically beneficial for their communities. This stakeholder added that "if they understood why diversity, equity, and inclusion works and affordable housing's connection to growing the economy and broadening the tax base, we'd be in a much better position."

SECTION IV.

DEMOGRAPHIC PATTERNS

SECTION IV.

Demographic Patterns

This section examines demographic patterns that are associated with residential settlement, housing availability and affordability, and access to opportunity in the city of Portland and Cumberland County. It also provides context for the analyses in Sections V (Access to Opportunity) and VI (Disproportionate Housing).

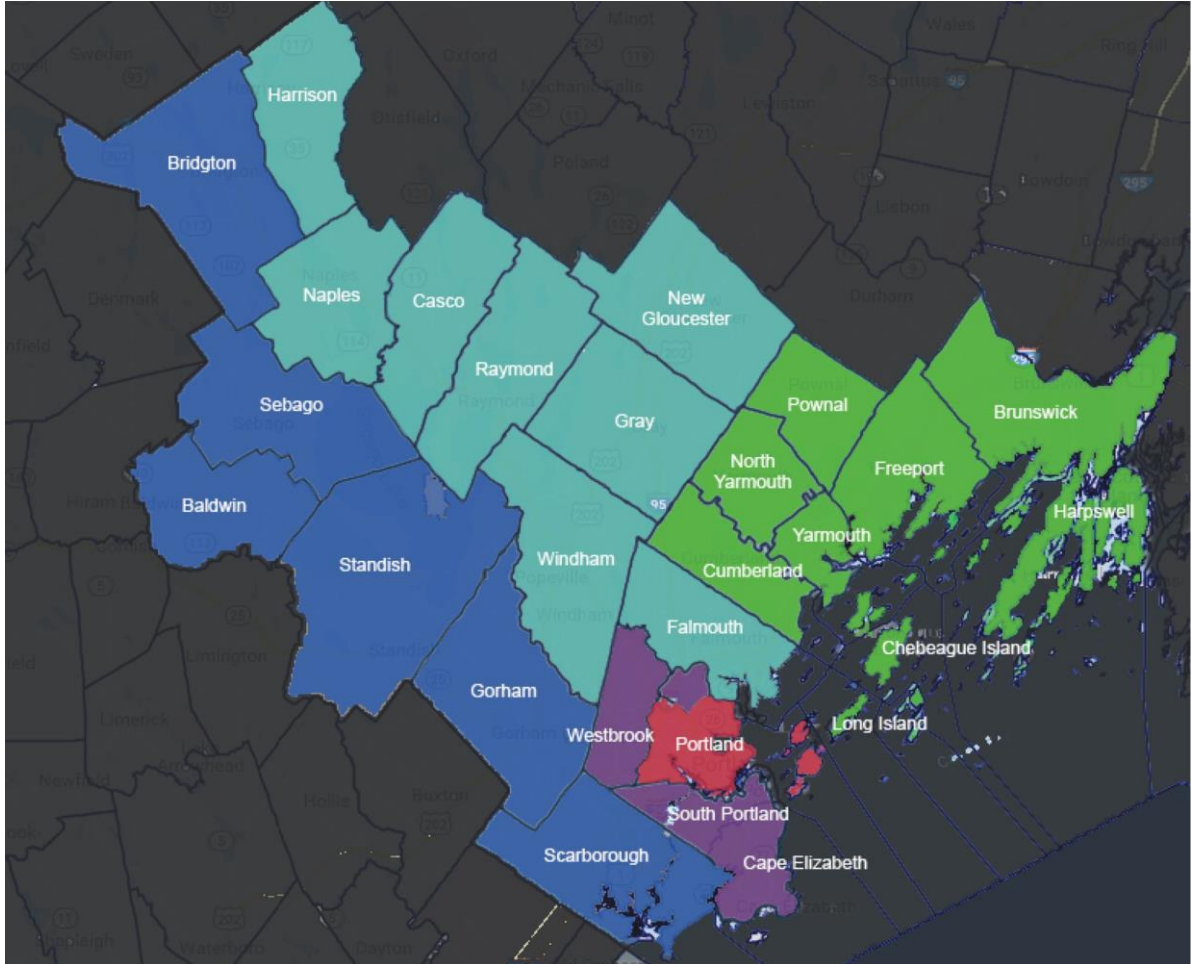
Consistent with recommended approaches in HUD fair housing guidance, this section:

- Describes demographic patterns in the county over time;
- Examines historical segregation and identifies the racial and ethnic groups that currently experience the highest levels of segregation; and
- Discusses exposure to concentrated poverty and identifies the characteristics of households living in high poverty areas.

Geographic area of analysis. This section includes data from Cumberland County HOME Consortium that are eligible to receive housing and community development funds from the U.S. Department of Housing and Urban Development.

To allow for a robust yet succinct analysis, each jurisdiction is included in their respective apportionment district as determined by the County. For the purposes of this analysis, District 4 includes Cape Elizabeth, South Portland, and Westbrook while District 5 includes the city of Portland in its entirety.

Cumberland County Apportionment Districts



Source: Cumberland County, Maine website.

- District 1 includes Baldwin, Bridgton, Gorham, Scarborough, Sebago, and Standish, located in the western and southern portions of the county. The largest jurisdiction, Scarborough, has a population of 22,135.
- District 2 includes Casco, Falmouth, Gray, Harrison, Naples, New Gloucester, Raymond, and Windham, located in the northern and central portions of the county. The largest jurisdiction, Windham, has a population of 18,434.
- District 3 includes Brunswick, Chebeague Island, Cumberland, Freeport, Harpswell, Long Island, North Yarmouth, Pownal, and Yarmouth, located in the eastern portion of the county. The largest jurisdiction, Brunswick, has a population of 21,756.
- District 4 includes Cape Elizabeth, South Portland, and Westbrook, located in the southern portion of the county. The largest jurisdiction, South Portland, has a population of 26,498.

- District 5 encompasses the city of Portland, which is located in the southern portion of the county. The city has a population of 68,408.

Primary Findings

- **Cumberland County has added close to 38,000 residents since 2000, representing an increase in population of 14%.** The fastest growing districts of in the county are District 1 (24%) and District 2 (18%). The slowest growing districts are Portland (6%) and District 3 (8%). The fastest growing jurisdictions were Sebago (33%), Gorham (30%) and Scarborough (30%). Harpswell is the only jurisdiction in the county that lost population over the same time period. (Figures IV-2 series).
- **The county is becoming more racially and ethnically diverse.** Increased racial and ethnic diversity in the county is driven by growth of Other Race, Latino/Hispanic, and African American/Black residents, primarily in Portland and District 4 jurisdictions. (Figure IV-3). Racial and ethnic segregation, as measured by a common measure called the Dissimilarity Index (DI), has increased since 2010, although it remains low except for **African American/Black residents who are living in more segregated conditions in 2020 compared to 2010.** (Figure IV-17).
- Overall, there are around 33,000 residents with a disability in the county. The share of the population with a disability decreased by one percentage point between 2012 and 2020. Districts with the highest rate of disability are Portland and District 1 (13% each, respectively) while District 2 has the lowest rate (9%). Among jurisdictions, Bridgton has the highest rate of disability (20%) while Falmouth, Raymond, Pownal, and Cape Elizabeth have the lowest share of the population with a disability (6% each respectively). (Figures IV-6 series).
- Currently, there are approximately 23,750 individuals and 3,200 families experiencing poverty in Cumberland County. However, **the county has seen a decrease in individual and family poverty since 2012.** Portland and District 4 have the highest individual and family poverty rates in the county, while District 1 has the lowest individual and family poverty rates. Yarmouth experienced the greatest increase in poverty—a 7 percentage point increase for both the town’s family and individual poverty rates. Long Island and Harpswell experienced the greatest decreases for both rates. (Figures IV-18 series).
- In Cumberland County, **single mothers are five times as likely to live in poverty as the average family household.** Portland (25%), along with Districts 3 and 4 (24% each, respectively), have the greatest proportion of single mothers experiencing poverty in the county. District 2 has the lowest share (13%). Compared to 2012, there are now six times as many single mother households experiencing poverty in Standish, as well as nearly four times as many in Yarmouth, more than twice as many in Cape Elizabeth and more than 1.5 times in Harrison and Falmouth in 2020.

- **The poverty rate for African American/Black families is almost 12 times that of non-Hispanic White families** in Cumberland County. Asian families are four times as likely to experience poverty as non-Hispanic White families, while Hispanic families are twice as likely.
- By age, county residents between the ages of 18-34 experience the highest rate of poverty (11%), followed by residents under 18 (9%). Residents under the age of 18 experience the highest rates of poverty in Westbrook (28%), Portland (16%), and Yarmouth (16%).
- **Among districts, Portland is the only one with an over-representation of low income households compared to its share of households countywide.** District 4 has a proportional share of low income households compared to its share of total households, while Districts 1 through 3 have an under-representation. (Figure IV-23 series).
- Concentrations of poverty within the county are found in Portland, Westbrook, Brunswick, Yarmouth, Casco, Naples, and Standish.
- There were **five census tracts with individual poverty rates at least three times that of the county rate.** Overall, these census tracts are comprised of residents who are younger, more racially and ethnically diverse, and more likely to be unemployed than the county overall. All of the five census tracts have a higher proportion of African American/Black residents compared to the county. (Figure IV-28).
- There were **seven census tracts with family poverty rates at least three times that of the county rate.** Collectively, these census tracts are more diverse and younger than the county overall. A majority of the census tracts have a greater proportion of single mother households. (Figure IV-29).

History of Residential Settlement and Segregation

The history of residential settlement in Cumberland County—and intentional efforts to segregate residents by race, ethnicity, national origin, and class—has continued to impact the present-day housing outcomes for households of color. This introductory section provides a brief synopsis of the county’s history to provide context for current demographic and housing conditions.

Cumberland County’s settlement history is closely linked with its economy and geographic location. The first permanent European settlement in the present-day county was a fishing and trading village established on the peninsula in 1630. Eventually, the area developed into a commercial port and shipping center, with the waterfront in Portland becoming “...the primary engine of [the city’s] growth and economy for three centuries afterword.”¹ Shipbuilding and fishing emerged as the dominant economies for the county in the nineteenth century. Portland also emerged as a major seaport and rail hub in the area during the mid-19th and early 20th century. However, after the deterioration of its port facilities and the implementation of new Canadian tariffs, Canada diverted its exports from Portland to its Maritime provinces. While the marine industry, particularly fishing and commercial shipping, still play a major role in the economy, tourism and the service sector have emerged as major economic drivers.

The economy in Maine also has a direct link to the county’s demographic makeup. The location in the northeastern part of the United States—far from the center of the country’s slave trade—and the types of agriculture and businesses that were cultivated in Maine discouraged the use of slavery. The state’s “...economy wasn’t built on plantation farming. Maine relied instead on forestry, shipbuilding and textile and mill industries fueled by waterpower.”² These industries, however, were collectively fueled by the work of enslaved people.

Maine played a role in the slave trade as early as the 17th and 18th centuries, where both slave labor and profits derived from enslaved people helped develop many Maine businesses and communities. The slave economy in Maine was built mainly through the trading of lumber, molasses, and rum by merchants and shipbuilders.³ Before its admittance to the union as part of the Missouri Compromise, Maine was a part of Massachusetts. In the late eighteenth century, Massachusetts declared slavery illegal; however, this did not result in freedom for many that were enslaved. Although no enslaved people in Massachusetts were officially listed in the 1790 federal census, “other records

¹ <https://www.portlandmaine.gov/1611/Portland-Waterfront-Old-Port-Historic-Di>

² <https://www.mainepublic.org/maine/2019-02-19/why-is-maine-so-white-and-what-it-means-to-ask-the-question>

³ https://www.mainememory.net/lessons/resource/a1b0c3g3/Black_History_and_the_History_of_Slavery_in_Maine_lesson_plan.pdf

such as wills and probate inventories...show that a small number of individuals continued to essentially be held in slavery in the late 18th and early 19th centuries.”⁴

The population of Black Mainers has historically been much smaller compared to the white population. From 1830 to 1950, the Black population increased from 1,000 to 2,000 and the white population soared from 398,000 to 910,000. During this time, the state experienced a strong Nativist movement and the presence of the Ku Klux Klan that ensured Black Mainers did not feel welcome despite their multi-generational residency.⁵ Although segregation was never formally codified into law, other forces led to segregation—namely, housing discrimination.⁶ Discrimination was also routinely experienced by Native Americans, Irish Catholics, French Canadians, and Jews.

According to Eben Simmons-Miller, a scholar in the politics of fair housing in Maine, housing discrimination “was the most recognized form of oppression faced by Maine’s African Americans” as late as the 1960s.⁷ While some middle class African American households found housing options in the broader region, African American households in Portland “...remained in ethnically mixed neighborhoods on the Portland peninsula as they could not afford the expensive rents elsewhere due to limited employment options.”⁸ Homes were often in substandard condition in these areas, thus impacting the value of the home and the amount of economic resources the neighborhood could attract. Discrimination within the housing market severely limited choices for racial and ethnic minorities and thus resulted in segregation within the city.

Ethnic minorities were also confronted with prejudice. Early census records in the Northeast recorded Acadians (French descendants living in Nova Scotia who had been forcibly removed by the British during the 1754-1763 French and Indian War), Irish, Jewish and French-Canadian separately from the white population—indicating a different classification of residency. Although the 1820 Maine Constitution allowed Black men and people with no property to vote, it disenfranchised paupers who resided in houses made for poor people and those who received public assistance. Census data from 1850 to 1904 shows this population was mostly immigrants and people of color.⁹ In 1893, an amendment was added to the state constitution that required literacy tests to vote; this was a major barrier to poor white immigrants in the state. Mainers voted to enfranchise paupers in 1965 through a constitutional amendment and removed the literacy

⁴ Lumpkins, Charles L. "Civil-Rights Activism in Maine, 1945-1971." *Maine History* 36, 3 (1996): 70-85. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol36/iss3/2>

⁵ Ibid

⁶ Ibid

⁷ Simmons-Miller, Eben. "Resistance In "Pioneer Territory": The Maine NAACP and the Pursuit of Fair Housing Legislation." *Maine History* 36, 3 (1996): 86-105. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol36/iss3/3>

⁸ Hillebrand, Justus. "Making it Work Before the Movement: African-American Community and Resistance in 1940s and 1950s Portland, Maine." *Maine History* 49, 1 (2015): 39-76. <https://digitalcommons.library.umaine.edu/mainehistoryjournal/vol49/iss1/3>

⁹ Myall, James (2020). *Race and Public Policy in Maine: Past, Present, and Future*. *Maine Policy Review*, vol. 29, no. 2.

requirement in 1970 following an amendment to the Voting Rights Act.¹⁰ The history of voter enfranchisement is important to recognize, as the laws that elected officials dictated often reflected the attitudes of the white, economically powerful actors within the housing market.

Describing the segregatory patterns in Portland in the 1930s and 1940s, one resident articulated:

"The street I lived on [Lafayette Street on Munjoy Hill], there [were] probably eight or ten black families...and there [were] maybe a few on Merrill Street, which is the next one over...[W]e used to say that most of the blacks were either at the East end, which was Munjoy Hill, or the West End down by the railroad station or Union Station. Very few in between. Then on the outskirts and the suburbs — forget about it. None at all."¹¹

A Black activist recalled in the 1950s and 1960s, there was "a definite geography to where blacks lived in Portland" and that they "could find housing only in neighborhoods specified by a tradition of segregation."¹² Black Mainers were routinely denied housing on the spot because of racial discrimination. This discrimination was perpetuated by real estate agents, who routinely complied with an unwritten code of "...prohibiting the selling of homes in suburban or affluent areas to blacks."¹³ These actions continue to have lasting impacts as the legacy of where Black families could reside in Portland in the 20th century and before has remained and shaped the living patterns of present-day communities.

Redlining. Today, exclusion of people based on their race or ethnicity is broadly referred to as "redlining." The term refers to a practice of the Federal Home Owner's Loan Corporation (HOLC) established in 1933 to stabilize the housing market. Prior to the HOLC, homeownership was unusual for all but the very wealthy, as lenders required very large down payments (e.g., 50% of home value), interest only payments with a "balloon" payment at the end of the loan term (which required new financing), and very short loan terms (5-7 years). The HOLC offered more reasonable lending terms in an effort to expand homeownership.

To evaluate loan risk, the HOLC hired local real estate agents to develop maps depicting neighborhood quality, which were largely based on racial and ethnic prejudice. Predominantly White neighborhoods were assigned a low-risk rating and correspondingly low interest rate loans. High risk neighborhoods, largely non-White, carried high-interest loans or no lending at all.

¹⁰ Ibid

¹¹ Hillebrand, Justus. "Making it Work Before the Movement: African-American Community and Resistance in 1940s and 1950s Portland, Maine." *Maine History* 49, 1 (2015): 39-76.

¹² Ibid

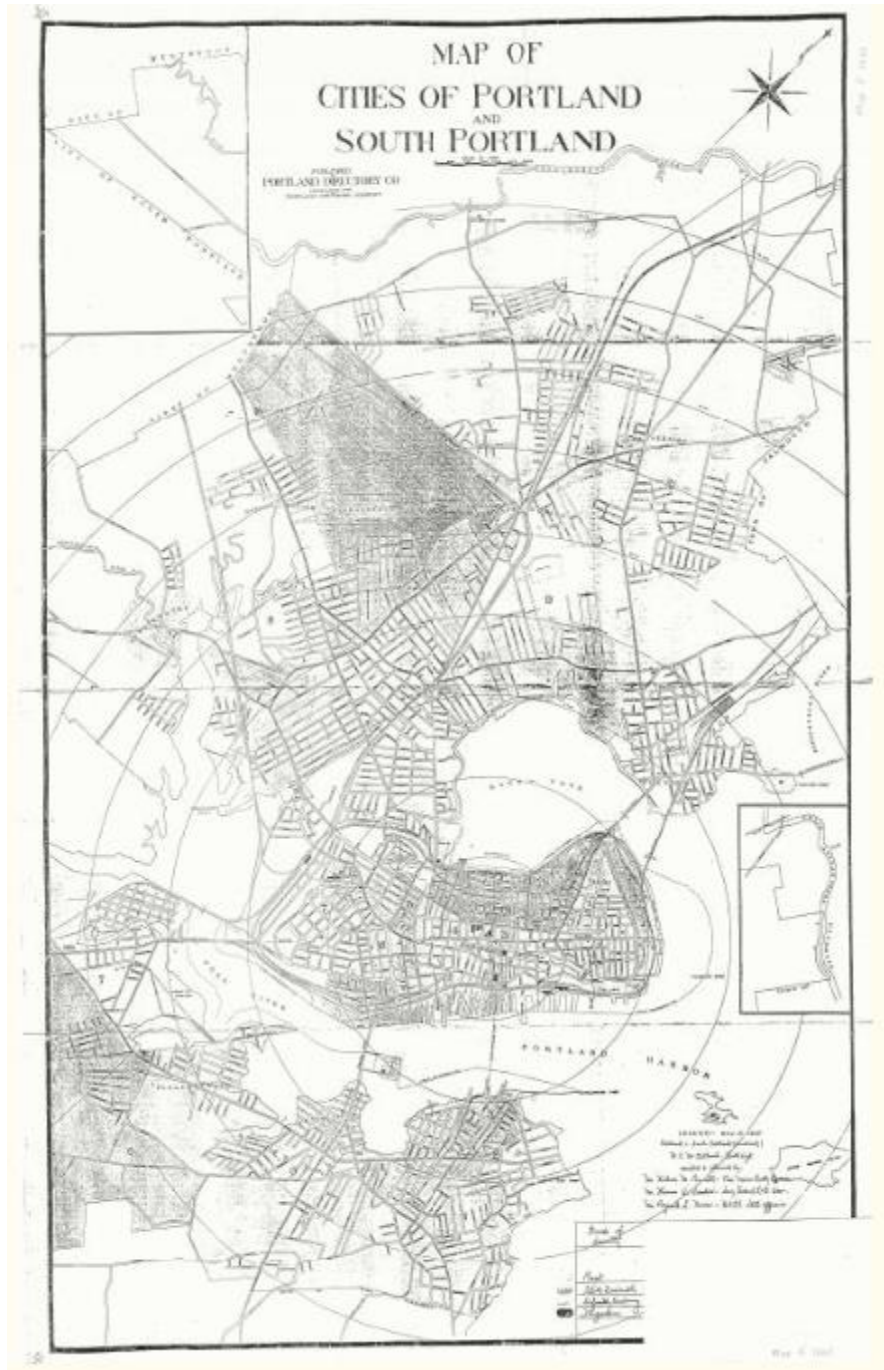
¹³ Ibid

A map of Portland made in 1935 used by bankers and real estate agents to evaluate mortgage risks designates “foreign-born, negro, or lower grade populations” as “hazardous.” It also labels where Irish, Italian, Jewish, and Polish neighborhoods were located.¹⁴ The practice of rating neighborhoods based on perceived risk was largely based on prejudice and excluded people in “hazardous” neighborhoods from accessing homeownership and the generational financial benefits that come with it. According to David Freidenreich, Professor of Jewish Studies at Colby College, real estate agents also steered Jewish and immigrant families away from affluent areas of town, thus creating segregated neighborhoods and unequal housing opportunities.¹⁵ As discussed later in this section, most of the racial, ethnic, and poverty concentrations still follow many of the lines drawn by the HOLC maps.

¹⁴ Maine Historical Society. Redline map of Portland and South Portland, 1935. <https://www.mainememory.net/artifact/105920>

¹⁵ Freidenreich, David. Redlining and Jewish Communities in Maine. <https://www.mainememory.net/sitebuilder/site/3086/page/4887>

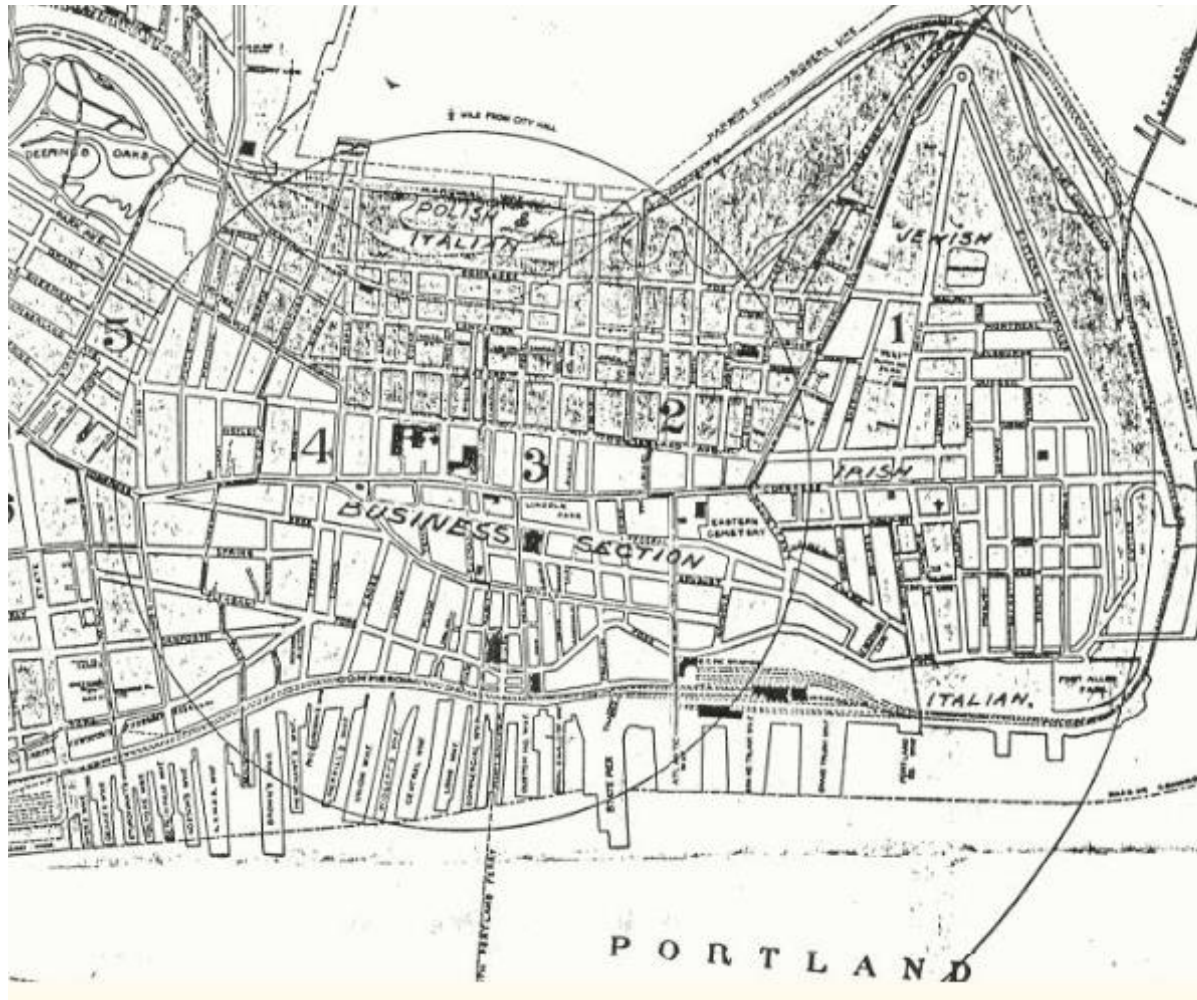
Figure IV-1a.
Portland and South Portland Redlining Map, 1935



Note: According to the Maine Memory Society, this photocopy is the only known surviving copy of this map. The lower right corner was obscured during the copying process in 1935.

Source: <https://www.mainememory.net/artifact/105920>

Figure IV-1b.
Portland and South Portland Redlining Map,



Source: <https://www.mainememory.net/artifact/105920>

After the HOLC was formed, the Federal Housing Administration (FHA) was created to insure residential mortgages. Insurance was effectively only available to White households, as the FHA underwriting manual instructed against insuring properties in “higher risk” neighborhoods. The FHA also favored “lower risk” lending in the expanding suburbs.

These federal policies were exacerbated by private actors—notably “blockbusting.” Real estate companies convinced White owners to sell at below market prices based on threats that non-White buyers were moving into the neighborhood. They then offered buyers of color, who had very few options for buying a home, inflated prices with unfavorable lending terms.

Decades later, these practices became illegal. The Federal Fair Housing Act of 1968 addressed some aspects of discrimination in lending by prohibiting banks from denying or basing the terms of mortgage loans based on protected class. The Equal Credit

Opportunity Act strengthened these provisions in 1974 by prohibiting discrimination in consumer and commercial credit. The Home Mortgage Disclosure Act (HMDA) of 1975 required financial institutions to provide financial data on mortgage lending, which federal regulators use today to detect violations of fairness in lending.

Urban Renewal. The Slum Clearance and Redevelopment Authority was established in Portland in 1951. The goal of the Authority was to make way for “a better more spacious way of living.”¹⁶ The actions taken to redevelop have shaped what Portland looks like today, both in terms of demographics and aesthetics. One project demolished the central and historic Union Station (built in 1888), which was replaced by a shopping center in 1961. Black, Italian, Jewish, and Polish neighborhoods were uprooted to make parking lots, parks, and “modern” buildings. Previously, these neighborhoods allowed racial and ethnic minorities an affordable haven, where landlords did not have restrictions against large families and where people within their community could gather safely. Once displaced, housing options were limited further and communities became disjointed.¹⁷ In 1958, for example, the Slum Clearance and Redevelopment Authority cleared the area of the Franklin Street corridor. Despite efforts of historic preservation groups, between 1961 and 1972, about 2,800 units were demolished and replaced by 525 units—not nearly enough to compensate the racial and ethnic minority families who were displaced in the process. The impact can be seen today, where Portland and the surrounding area remains a white-majority city with pockets of segregation that either survived the renewal process or were pushed to their present location.

Cumulative impact. In sum, for more than 100 years, the housing choices of non-White households in the county have been disrupted through forced segregation; restrictions on migration into higher opportunity areas; denial of homeownership; demolition of local businesses and homes; and barriers for wealth-building.

These practices that denied housing choice for many protected classes—and especially racial and ethnic minorities—were persistently and stubbornly applied for decades. People who identify as lesbian, gay, bisexual, transgender, and gender fluid (LGBTQ+) have also experienced discrimination and been denied access to housing choice, although that discrimination has not been widely documented because LGBTQ+ Fair Housing Act protections are recent, clarified through legal decisions, Executive Orders, and HUD guidance.

The cumulative impact of these actions, as discussed in the remainder of this report, have led to considerable differences in housing choice and access to economic opportunity.

¹⁶ Larry, Julie. Greater Portland Landmarks' Urban Renewal Roots. <https://www.portlandlandmarks.org/blog/2020/4/28/historic-preservation-in-the-urban-renewal-era>

¹⁷ Ibid

Demographic Context

As shown in Figures IV-2a through IV-2e, Cumberland County has added close to 38,000 residents since 2000, representing an increase in population of 14%.

The fastest growing districts in the county are District 1 (24%) and District 2 (18%).

- In District 1, Sebago, Scarborough, and Gorham all experienced an increase in population over 30%, respectively.
- In District 2, Windham, Falmouth, Gray, and Naples all saw their populations increase by at least 20% over the last twenty years.
- In District 3, North Yarmouth (27%) and Cumberland (18%) experienced the greatest increases in population.
- In District 4, Westbrook (26%) saw a considerable increase in population, followed by South Portland (14%)

Portland experienced a modest increase in population, growing by 6% in the last twenty years. The city's overall share of the county's population decreased by one percentage point (24% in 2000, 23% in 2020).

The only jurisdiction to lose population over the last twenty years was Harpswell, which experienced a four percentage point decrease in its population between 2000 and 2010. As shown in the far right columns in the tables, these 20 year growth patterns shifted individual districts' share of the county's population only modestly.

Figure IV-2a.

Share of Population and Population Change by Jurisdiction, District 1 and County, 2000-2020

	2000	2010	2020	Change		Share of County	
				Number	Percent	2000	2020
District 1	48,002	53,628	59,564	11,562	24%	18%	20%
Baldwin	1,290	1,525	1,520	230	18%	0%	1%
Bridgton	4,883	5,210	5,418	535	11%	2%	2%
Gorham	14,141	16,381	18,336	4,195	30%	5%	6%
Scarborough	16,970	18,919	22,135	5,165	30%	6%	7%
Sebago	1,433	1,719	1,911	478	33%	1%	1%
Standish	9,285	9,874	10,244	959	10%	3%	3%
Cumberland County	265,612	281,674	303,069	37,457	14%	100%	100%

Source: U.S. Census Bureau 2000, 2010, and 2020 Decennial Census.

Figure IV-2b.
Share of Population and Population Change by Jurisdiction, District 2 and County, 2000-2020

	2000	2010	2020	Change		Share of County	
				Number	Percent	2000	2020
District 2	50,194	56,269	59,377	9,183	18%	19%	20%
Casco	3,469	3,742	3,646	177	5%	1%	1%
Falmouth	10,310	11,185	12,444	2,134	21%	4%	4%
Gray	6,820	7,761	8,269	1,449	21%	3%	3%
Harrison	2,315	2,730	2,447	132	6%	1%	1%
Naples	3,274	3,872	3,925	651	20%	1%	1%
New Gloucester	4,803	5,542	5,676	873	18%	2%	2%
Raymond	4,299	4,436	4,536	237	6%	2%	1%
Windham	14,904	17,001	18,434	3,530	24%	6%	6%
Cumberland County	265,612	281,674	303,069	37,457	14%	100%	100%

Source: U.S. Census Bureau 2000, 2010, and 2020 Decennial Census.

Figure IV-2c.
Share of Population and Population Change by Jurisdiction, District 3 and County, 2000-2020

	2000	2010	2020	Change		Share of County	
				Number	Percent	2000	2020
District 3	54,633	54,067	59,255	4,622	8%	21%	20%
Brunswick	21,172	20,278	21,756	584	3%	8%	7%
Chebeague Island	N/A	341	396	N/A	N/A	0%	0%
Cumberland	7,159	7,211	8,473	1,314	18%	3%	3%
Freeport	7,800	7,879	8,737	937	12%	3%	3%
Harpwell	5,239	4,740	5,031	-208	-4%	2%	2%
Long Island	202	230	234	32	16%	0%	0%
North Yarmouth	3,210	3,565	4,072	862	27%	1%	1%
Pownal	1,491	1,474	1,566	75	5%	1%	1%
Yarmouth	8,360	8,349	8,990	630	8%	3%	3%
Cumberland County	265,612	281,674	303,069	37,457	14%	100%	100%

Note: Chebeague Island was incorporated in 2007.

Source: U.S. Census Bureau 2000, 2010, and 2020 Decennial Census.

Figure IV-2d.
Share of Population and Population Change by Jurisdiction, District 4 and County, 2000-2020

	2000	2010	2020	Change		Share of County	
				Number	Percent	2000	2020
District 4	48,534	51,511	56,433	7,899	16%	18%	19%
Cape Elizabeth	9,068	9,015	9,535	467	5%	3%	3%
South Portland	23,324	25,002	26,498	3,174	14%	9%	9%
Westbrook	16,142	17,494	20,400	4,258	26%	6%	7%
Cumberland County	265,612	281,674	303,069	37,457	14%	100%	100%

Source: U.S. Census Bureau 2000, 2010, and 2020 Decennial Census.

Figure IV-2e.
Share of Population and Population Change by Jurisdiction, District 5 and County, 2000-2020

	2000	2010	2020	Change		Share of County	
				Number	Percent	2000	2020
District 5 - Portland	64,249	66,194	68,408	4,159	6%	24%	23%
Cumberland County	265,612	281,674	303,069	37,457	14%	100%	100%

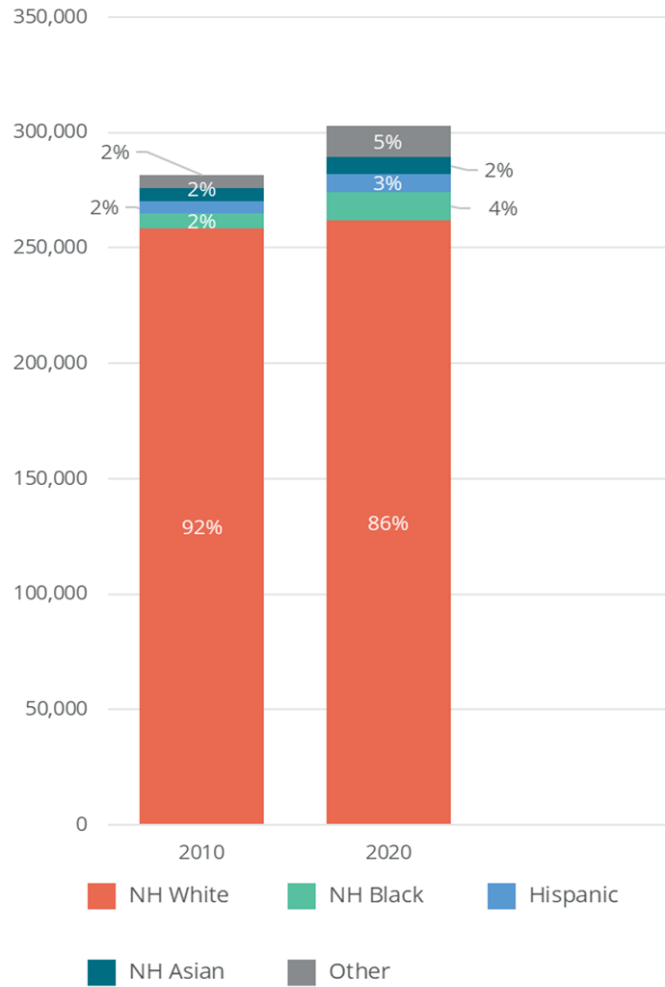
Source: U.S. Census Bureau 2000, 2010, and 2020 Decennial Census.

Figure IV-3 shows the race and ethnicity of residents in the county. As the county has grown, it has increased its racial and ethnic diversity, primarily through the growth of Other Race, African American/Black, and Hispanic residents.

- The county as a whole is 86% non-Hispanic White. The second largest racial group is residents who identify as Other Race, comprising 5% of the county's population.
- In 2010, the county was 92% non-Hispanic White, with African American/Black, Hispanic, Asian and Other Race residents each comprising 2% of the county's population.
- In Portland, 78% of residents are non-Hispanic White. African American/Black residents make up 10% of the city's population, followed by Hispanic (4%) and Asian (3%) residents. Residents who identify as American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, and Other Race each comprise less than 1% of the city's population, respectively.
- Portland was less racially and ethnically diverse in 2010, with 84% of its residents identifying as non-Hispanic White. African American/Black residents comprised 7% of the city's residents, followed by Hispanic and Asian residents (3% each, respectively). Residents identifying as American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, or Other Race each comprised less than 1% of the city's population, respectively.

**Figure IV-3.
Cumberland County
Population by Race and
Ethnicity, 2010 and 2020**

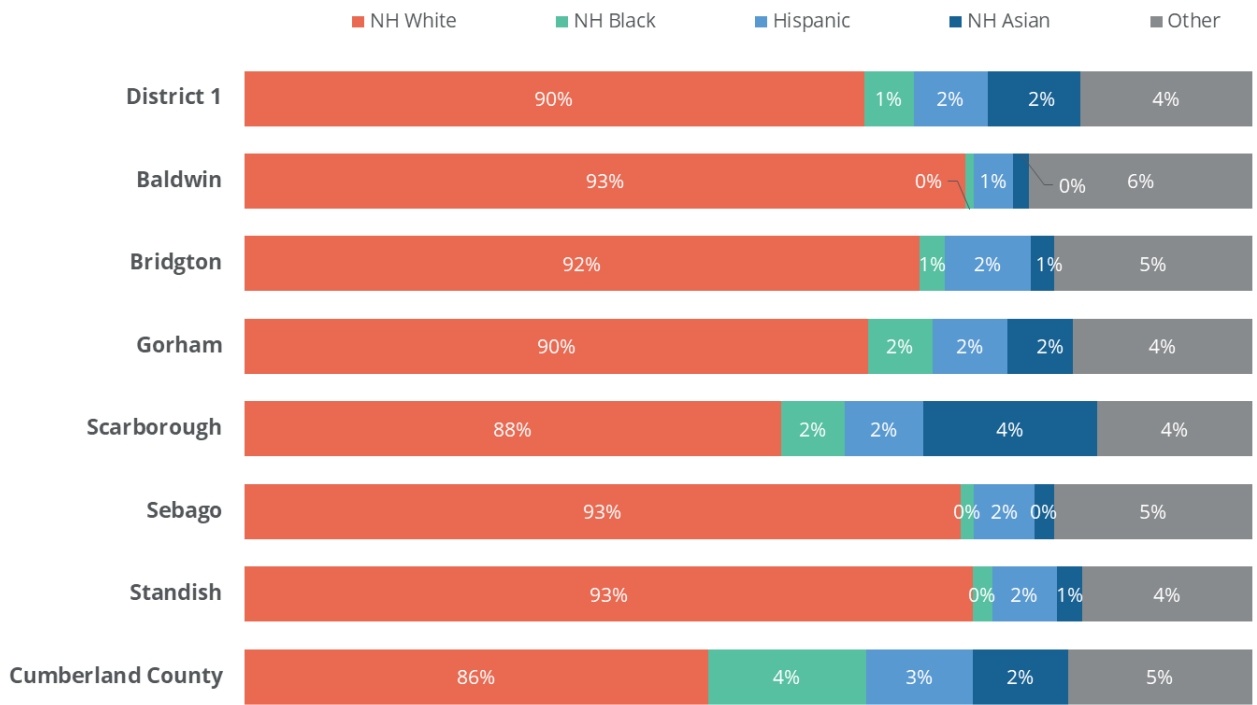
Source:
U.S. Census Bureau 2010 and 2020 Decennial Census.



Racial/ethnic distribution differs marginally by district, as shown in Figures IV-4a through IV-4e. Portland and District 4 have the smallest non-White populations, with 78% and 84% of their residents identifying as non-Hispanic White. Non-Hispanic White populations make up at least 90% of the population in Districts 1 through 3. These districts also have the smallest proportions of African American/Black residents, with no jurisdiction having more than 2% of African American/Black residents living in their town/city. By comparison, Portland, Westbrook, and South Portland’s African American/Black population is 10%, 8%, and 6%, respectively.

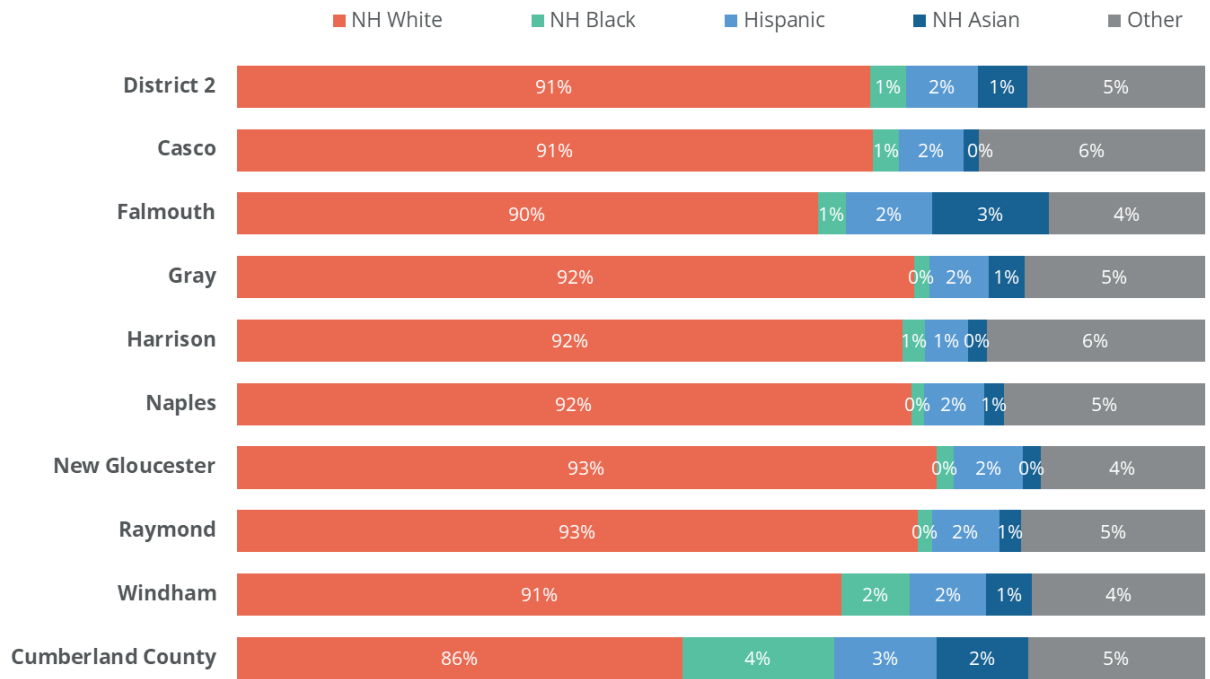
The largest proportion of Latino/Hispanic households live in Brunswick and Portland (4% each respectively), while the Asian population is largest in Scarborough and Westbrook (4% each respectively). The largest proportion of residents who identify as Other Race live in Baldwin, Casco, Harrison, and Brunswick at 6%.

Figure IV-4a.
Race and Ethnicity Distribution by Jurisdiction, District 1 and County, 2020



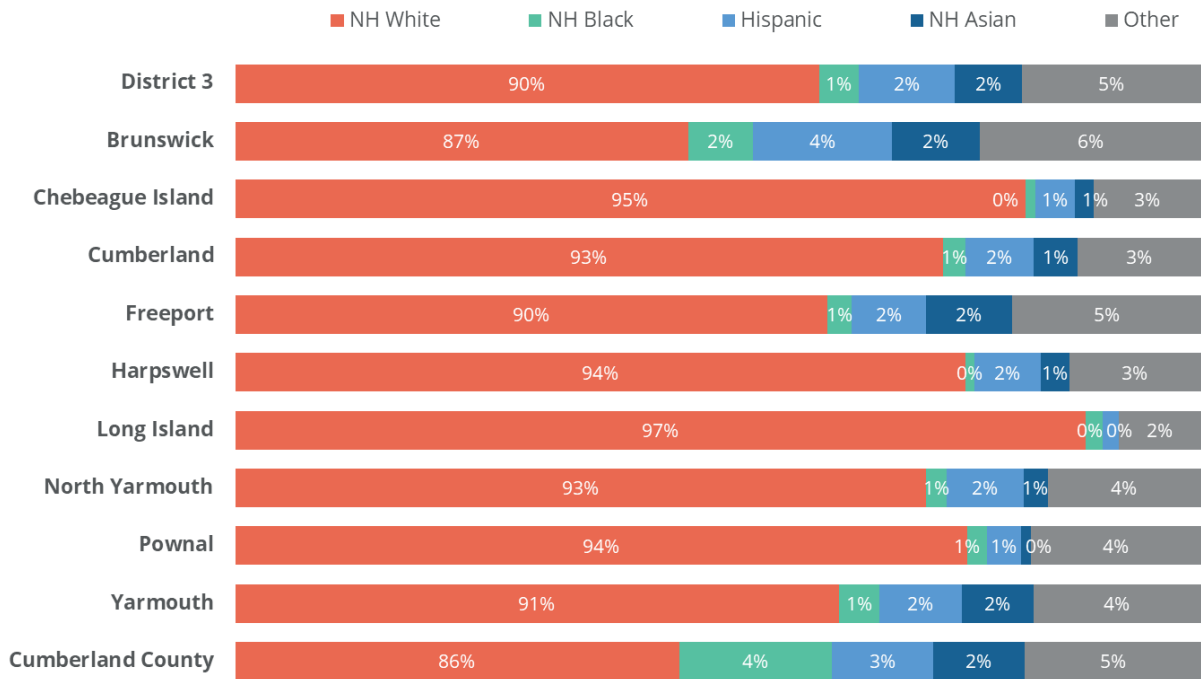
Source: U.S. Census Bureau 2020 Decennial Census.

Figure IV-4b.
Race and Ethnicity Distribution by Jurisdiction, District 2 and County, 2020



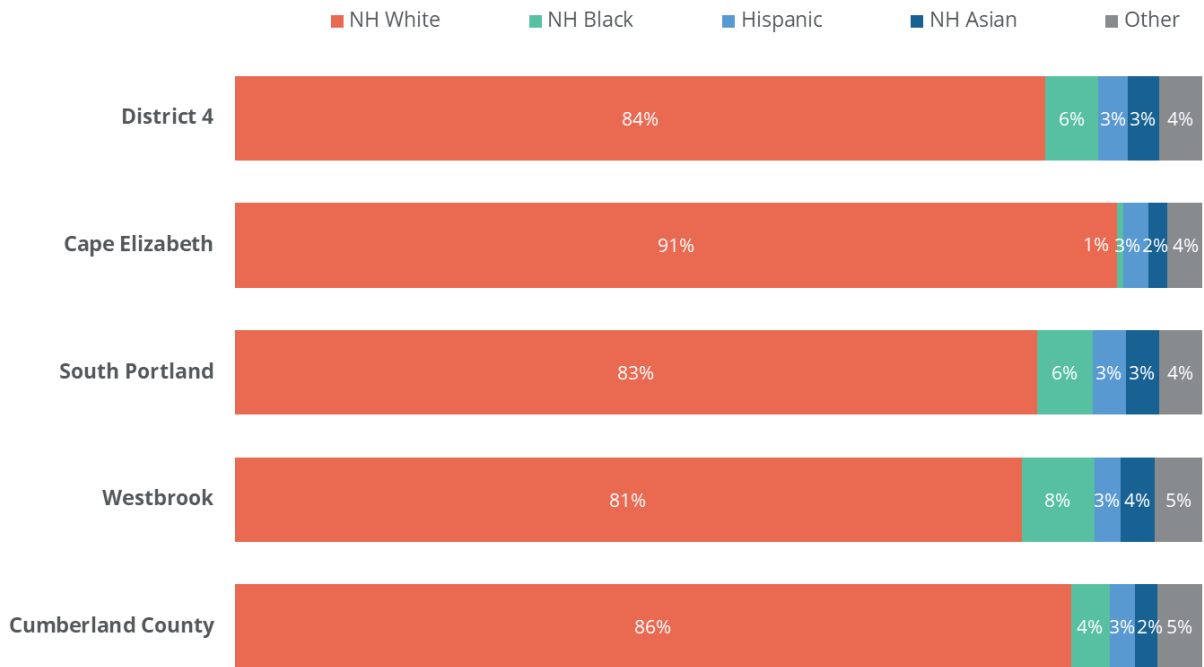
Source: U.S. Census Bureau 2020 Decennial Census.

Figure IV-4c.
Race and Ethnicity Distribution by Jurisdiction, District 3 and County, 2020



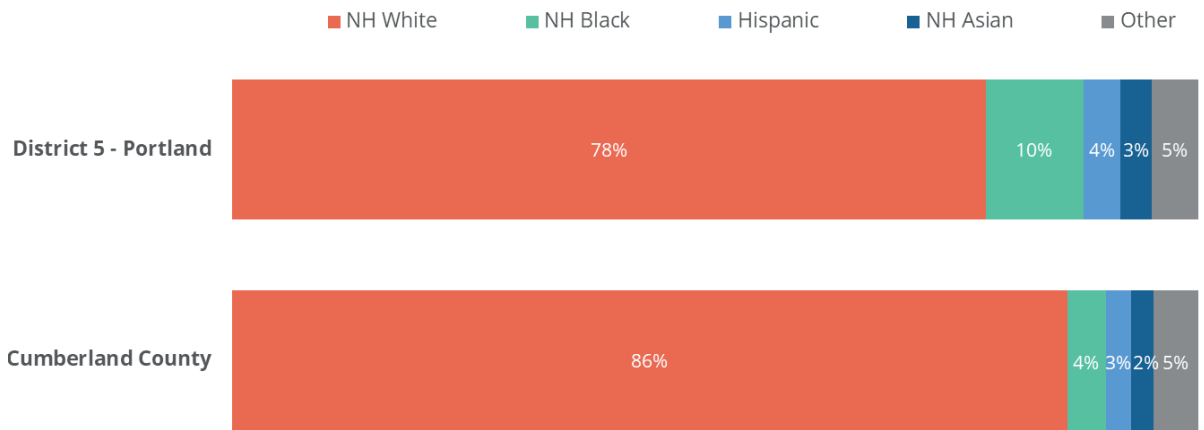
Source: U.S. Census Bureau 2020 Decennial Census.

Figure IV-4d.
Race and Ethnicity Distribution by Jurisdiction, District 4 and County, 2020



Source: U.S. Census Bureau 2020 Decennial Census.

Figure IV-4e.
Race and Ethnicity Distribution by Jurisdiction, District 5 and County, 2020



Source: U.S. Census Bureau 2020 Decennial Census.

Familial status. The proportion of family households in Cumberland County decreased slightly between 2010 and 2020 (62% in 2010, 60% in 2020). Over half of family¹⁸ households in Cumberland County are married couples with no children, followed by married couples with children (17%), other families¹⁹ (8%), and single parents (4%). These data include same-sex married couples.²⁰ Non-family households, which can be comprised of roommates, unrelated people living together, or single people living alone, account for 40% of all county households.

Portland experienced a similar decrease in family households over the same time period (45% in 2010, 43% in 2020). The majority of family households in Portland are married couples with no children (20%), followed by married couples with children (12%), other families (6%), and single parents (5%). Nearly six in ten households in Portland are non-family households. Portland's non-family households are predominantly people living alone (68%). Nearly a quarter of these households are seniors.

Household type varies significantly between jurisdictions. As shown in Figures IV-5a through IV-5e, District 1 has the highest share of family households (70%) among districts in Cumberland County. Standish, Gorham, and Scarborough have the highest proportions of family households in the district. Bridgton and Sebago have the lowest proportions of family households in District 1 (61% each, respectively). Bridgton also has the greatest share of single parent households (7%).

Family households make up nearly two thirds of all households in District 2. Family households account for three out of four households in both New Gloucester and Raymond. Casco and Harrison have the lowest share of family households (48% and 51%, respectively) in the district. Naples has the highest proportion of single parent households (6%).

Similar to District 2, family households make up two thirds of all households in District 3. Pownal, Freeport, and Cumberland have the greatest shares of family households (79%, 78%, and 77%, respectively) while Chebeague Island and Brunswick have the lowest shares (51% and 57%, respectively). Yarmouth has the greatest proportion of single parent households in the district (6%).

The proportion of family households in District 4 (58%) is lower than the county overall. However, family households make up seven out of every ten households in Cape Elizabeth. South Portland and Westbrook both have smaller proportions (55% each, respectively). South Portland has the greatest share of single parent households in the district (6%).

¹⁸ A family is a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together.

¹⁹ Other families could include households who live their parents or other relatives.

²⁰ Same-sex marriage was legalized by Maine voters in 2012.

Figure IV-5a.
Household Type by Jurisdiction, District 1 and County, 2020

Jurisdiction	Family Households					Non-family households
	All family households	Married with children	Married, no children	Single parent	Other family households	
District 1	70%	20%	38%	5%	7%	30%
Baldwin	68%	11%	48%	1%	8%	32%
Bridgton	61%	6%	36%	7%	11%	39%
Gorham	71%	28%	33%	5%	5%	29%
Scarborough	71%	20%	41%	5%	5%	29%
Sebago	61%	18%	32%	1%	10%	39%
Standish	73%	20%	39%	3%	12%	27%
Cumberland County	60%	17%	31%	4%	8%	40%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-5b.
Household Type by Jurisdiction, District 2 and County, 2020

Jurisdiction	Family Households					Non-family households
	All family households	Married with children	Married, no children	Single parent	Other family households	
District 2	66%	19%	35%	3%	9%	34%
Casco	48%	10%	27%	1%	9%	52%
Gray	67%	16%	40%	4%	7%	33%
Harrison	51%	7%	36%	3%	5%	49%
Naples	54%	8%	29%	6%	12%	46%
New Gloucester	76%	35%	35%	2%	4%	24%
Raymond	75%	17%	52%	3%	4%	25%
Windham	70%	24%	32%	3%	11%	30%
Cumberland County	60%	17%	31%	4%	8%	40%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-5c.
Household Type by Jurisdiction, District 3 and County, 2020

Jurisdiction	Family Households					Non-family households
	All family households	Married with children	Married, no children	Single parent	Other family households	
District 3	67%	21%	34%	4%	9%	33%
Brunswick	57%	17%	29%	3%	7%	43%
Chebeague Island	51%	9%	33%	4%	4%	49%
Cumberland	77%	33%	35%	4%	6%	23%
Freeport	78%	22%	40%	5%	11%	22%
Harpwell	64%	9%	47%	4%	3%	36%
Long Island	61%	23%	30%	0%	8%	39%
North Yarmouth	71%	27%	29%	2%	13%	29%
Pownal	79%	22%	46%	3%	9%	21%
Yarmouth	68%	22%	28%	6%	12%	32%
Cumberland County	60%	17%	31%	4%	8%	40%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-5d.
Household Type by Jurisdiction, District 4 and County, 2020

Jurisdiction	Family Households					Non-family households
	All family households	Married with children	Married, no children	Single parent	Other family households	
District 4	58%	15%	29%	5%	9%	42%
Cape Elizabeth	71%	27%	38%	3%	3%	29%
South Portland	55%	13%	26%	6%	10%	45%
Westbrook	55%	14%	29%	4%	8%	45%
Cumberland County	60%	17%	31%	4%	8%	40%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-5e.
Household Type by Jurisdiction, District 5 and County, 2020

Jurisdiction	Family Households					Non-family households
	All family households	Married with children	Married, no children	Single parent	Other family households	
District 5 - Portland	43%	12%	20%	5%	6%	57%
Cumberland County	60%	17%	31%	4%	8%	40%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Disability. Figures IV-6a through IV-6e show the number of residents with a disability and disability rates by district. Overall, the proportion of county residents experiencing a disability has slightly decreased since 2012 (12% in 2012, 11% in 2020). Currently, there are approximately 33,000 residents experiencing a disability in Cumberland County.

Compared to the county, the share of the population experiencing a disability is slightly higher in Portland (13%). There has been no change in the proportion of residents experiencing a disability in the city since 2012.

In District 1, Bridgton has the highest rate of any jurisdiction in the county, where one in five residents experiences a disability. Baldwin residents also experience high rates of disability at 19%. Scarborough has the lowest rate in the district. In District 2, Casco has the highest share of people experiencing a disability (16%). Residents in New Gloucester and Naples also experience disability at a higher rate than the county (13% each, respectively). Falmouth and Raymond have the lowest rates among the district’s jurisdictions (6% each, respectively).

Brunswick (14%), Harpswell (12%), and Long Island (12%) residents experience disability at the highest rates among all District 3 jurisdictions. Pownal has the lowest rate of disability in District 3 (6%). Four other District 3 jurisdictions all have rates in the single digits. Westbrook and South Portland have the highest rates of disability in District 4 (14% and 13%, respectively). Cape Elizabeth has the lowest share of the population with a disability at 6%.

**Figure IV-6a.
Residents with
Disabilities by
Jurisdiction, District 1
and County, 2020**

Note:

Population refers to total civilian noninstitutionalized population.

Source:

2016-2020 American Community Survey 5-year estimates.

	Total Population	With a Disability	% with a Disability
District 1	56,544	7,132	13%
Baldwin	1,390	262	19%
Bridgton	5,373	1,070	20%
Gorham	17,591	2,176	12%
Scarborough	20,265	2,124	10%
Sebago	1,827	281	15%
Standish	10,098	1,219	12%
Cumberland County	290,964	33,093	11%

**Figure IV-6b.
Residents with
Disabilities by
Jurisdiction, District
2 and County, 2020**

Note:

Population refers to total civilian noninstitutionalized population.

Source:

2016-2020 American Community Survey 5-year estimates.

	Total Population	With a Disability	% with a Disability
District 2	59,044	5,530	9%
Casco	3,895	625	16%
Falmouth	12,179	715	6%
Gray	8,150	912	11%
Harrison	2,804	316	11%
Naples	3,976	516	13%
New Gloucester	5,778	729	13%
Raymond	4,514	282	6%
Windham	17,748	1,435	8%
Cumberland County	290,964	33,093	11%

**Figure IV-6c.
Residents with
Disabilities by
Jurisdiction, District 3 and
County, 2020**

Note:

Population refers to total civilian noninstitutionalized population.

Source:

2016-2020 American Community Survey 5-year estimates.

	Total Population	With a Disability	% with a Disability
District 3	56,244	5,620	10%
Brunswick	20,285	2,801	14%
Chebeague Island	515	59	11%
Cumberland	8,144	538	7%
Freeport	8,361	570	7%
Harpwell	4,867	598	12%
Long Island	282	33	12%
North Yarmouth	3,839	283	7%
Pownal	1,549	87	6%
Yarmouth	8,402	651	8%
Cumberland County	290,964	33,093	11%

**Figure IV-6d.
Residents with Disabilities
by Jurisdiction, District 4
and County, 2020**

Note:

Population refers to total civilian noninstitutionalized population.

Source:

2016-2020 American Community Survey 5-year estimates.

	Total Population	With a Disability	% with a Disability
District 4	53,475	6,421	12%
Cape Elizabeth	9,307	581	6%
South Portland	25,297	3,224	13%
Westbrook	18,871	2,616	14%
Cumberland County	290,964	33,093	11%

**Figure IV-6e.
Residents with Disabilities
by Jurisdiction, District 5
and County, 2020**

Note:

Population refers to total civilian noninstitutionalized population.

Source:

2016-2020 American Community Survey 5-year estimates.

	Total Population	With a Disability	% with a Disability
District 5 - Portland	65,624	8,386	13%
Cumberland County	290,964	33,093	11%

As shown in Figures IV-7a through IV-7e, the incidence of disability increases with age. For example, about 7% of county residents between the ages of 18 to 34 have a disability, compared to 45% of residents ages 75 and older.

In Portland, residents over the age of 35 experience disability at a higher rate compared with the county. Residents between the ages of 35-64 have a disability rate of 14% (compared to 10% countywide), while a quarter of residents aged 65-74 (18% countywide) and half of residents over 75 (45% countywide) experience a disability. Residents under the age of 35 in Portland experience disabilities at a lower rate compared to the county.

While the pattern of increased incidence of disability by age holds true across communities, there are variations. For example, older adults living in New Gloucester and Bridgton are most likely to have a disability, yet older adults in Gray and North Yarmouth are least likely to have a disability.

In District 1, residents between the age of 18-34 in Bridgton experience disabilities at twice the rate of the county. In Baldwin, the rate of residents between the age of 5-17 experiencing a disability is more than four times the county rate. In District 2, while older adults in Gray are less likely to have a disability, residents between the age of 5-17 experience disabilities at three times the rate of the county. Residents under the age of 5 in New Gloucester also experience disabilities at a significantly higher rate compared to the county (7% in New Gloucester, less than 1% countywide).

Unlike all other jurisdictions in District 3, residents between the age of 64-75 experience disabilities at a higher rate than residents over the age of 75 (38% and 17%, respectively). Pownal has the highest proportion of residents under the age of 5 experiencing a disability (3%) among District 3 jurisdictions. In District 4, over half of residents in South Portland over the age of 75 experience a disability compared with just a quarter of residents older than 75 in Cape Elizabeth.

Differences in the prevalence of disability by community is likely a function of numerous factors ranging from housing affordability to age to access to services available to support aging in place, as well as disparities in health outcomes including mortality rates.

Figure IV-7a.
Share of Residents with Disabilities by Age Cohort, District 1, 2020

	Total Population with Disability	Under Age 5	Age 5 to 17	Age 18 to 34	Age 35 to 64	Age 65 to 74	Age 75 and over
District 1	13%	0%	7%	10%	9%	20%	49%
Baldwin	19%	0%	22%	2%	19%	23%	48%
Bridgton	20%	0%	0%	14%	19%	11%	56%
Gorham	12%	0%	6%	13%	9%	24%	55%
Scarborough	11%	0%	9%	6%	6%	17%	43%
Sebago	15%	0%	15%	12%	11%	26%	51%
Standish	12%	0%	6%	8%	10%	26%	53%
Cumberland County	11%	0%	5%	7%	10%	18%	45%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-7b.
Share of Residents with Disabilities by Age Cohort, District 2, 2020

	Total Population with Disability	Under Age 5	Age 5 to 17	Age 18 to 34	Age 35 to 64	Age 65 to 74	Age 75 and over
District 2	9%	1%	6%	6%	7%	16%	36%
Casco	16%	0%	0%	16%	17%	12%	39%
Falmouth	6%	0%	3%	6%	3%	8%	29%
Gray	11%	0%	16%	7%	11%	17%	16%
Harrison	11%	0%	3%	9%	11%	9%	25%
Naples	13%	0%	5%	2%	9%	26%	53%
New Gloucester	13%	7%	3%	17%	11%	20%	60%
Raymond	6%	0%	1%	0%	5%	14%	29%
Windham	8%	0%	7%	3%	6%	21%	38%
Cumberland County	11%	0%	5%	7%	10%	18%	45%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-7c.
Share of Residents with Disabilities by Age Cohort, District 3, 2020

	Total Population with Disability	Under Age 5	Age 5 to 17	Age 18 to 34	Age 35 to 64	Age 65 to 74	Age 75 and over
District 3	10%	0%	4%	6%	7%	14%	43%
Brunswick	14%	0%	8%	9%	10%	21%	49%
Chebeague Island	12%	0%	0%	4%	5%	15%	36%
Cumberland	7%	0%	2%	6%	5%	13%	34%
Freeport	7%	0%	3%	5%	5%	7%	49%
Harpswell	12%	0%	7%	0%	11%	10%	35%
Long Island	12%	0%	0%	6%	8%	26%	39%
North Yarmouth	7%	0%	5%	4%	5%	38%	17%
Pownal	6%	3%	0%	1%	5%	14%	30%
Yarmouth	8%	0%	1%	4%	5%	10%	47%
Cumberland County	11%	0%	5%	7%	10%	18%	45%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-7d.
Share of Residents with Disabilities by Age Cohort, District 4, 2020

	Total Population with Disability	Under Age 5	Age 5 to 17	Age 18 to 34	Age 35 to 64	Age 65 to 74	Age 75 and over
District 4	12%	0%	4%	7%	11%	19%	45%
Cape Elizabeth	6%	0%	1%	6%	6%	8%	24%
South Portland	13%	0%	3%	6%	11%	23%	52%
Westbrook	14%	0%	6%	8%	14%	21%	46%
Cumberland County	11%	0%	5%	7%	10%	18%	45%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-7e.
Share of Residents with Disabilities by Age Cohort, District 5, 2020

	Total Population with Disability	Under Age 5	Age 5 to 17	Age 18 to 34	Age 35 to 64	Age 65 to 74	Age 75 and over
District 5 - Portland	13%	0%	3%	6%	14%	25%	50%
Cumberland County	11%	0%	5%	7%	10%	18%	45%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figures IV-8a through IV-8e present the number of residents with disabilities by jurisdiction and shows the prevalence of different types of difficulties²¹, as defined by the Census. Note that an individual may have one or more types of difficulties. The most common types of disability in Cumberland County are ambulatory, cognitive, and independent living difficulty (5%). The most common type of disability varies slightly by district (noted below).

- District 1: Ambulatory and cognitive (5%);
- District 2: Cognitive and hearing (4%);
- District 3: Ambulatory, cognitive, and hearing (4%);
- District 4: Ambulatory (9%); and
- Portland: Cognitive and independent living (6%).

Aside from cognitive and independent living disabilities, Portland residents experience all other types of disability at the same rate as the county.

Of note, District 4 residents experience several disabilities at a higher rate compared to the county. These residents are 50% more likely to experience hearing and self-care disabilities (6% and 3%, respectively) and nearly twice as likely to experience an ambulatory difficulty (9%).

²¹ Difficulty is the term used in the Census as a classification category for different types of disabilities.

Figure IV-8a.
Disability by Type and Share of Population, by Jurisdiction, District 1 and County, 2020

Jurisdiction	Residents with a Disability	Type of Difficulty					
		Hearing Difficulty	Vision Difficulty	Cognitive Difficulty	Ambulatory Difficulty	Self-Care Difficulty	Independent Living Difficulty
District 1	7,132	4%	2%	5%	5%	2%	4%
Baldwin	262	6%	2%	7%	9%	3%	7%
Bridgton	1,070	5%	1%	5%	11%	2%	9%
Gorham	2,176	4%	2%	6%	5%	3%	5%
Scarborough	2,124	3%	2%	4%	5%	2%	4%
Sebago	281	4%	2%	7%	5%	1%	7%
Standish	1,219	7%	1%	5%	4%	3%	6%
Cumberland County	33,093	4%	2%	5%	5%	2%	5%

Note: Percentages represent the share of the total population in each respective jurisdiction.

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-8b.
Disability by Type and Share of Population, by Jurisdiction, District 2 and County, 2020

Jurisdiction	Residents with a Disability	Type of Difficulty					
		Hearing Difficulty	Vision Difficulty	Cognitive Difficulty	Ambulatory Difficulty	Self-Care Difficulty	Independent Living Difficulty
District 2	5,530	4%	1%	4%	3%	1%	3%
Casco	625	7%	2%	8%	6%	3%	8%
Falmouth	715	2%	1%	3%	2%	1%	2%
Gray	912	2%	2%	5%	3%	1%	4%
Harrison	316	5%	1%	4%	4%	0%	3%
Naples	516	6%	2%	4%	5%	1%	2%
New Gloucester	729	6%	1%	4%	5%	2%	4%
Raymond	282	3%	1%	2%	2%	0%	2%
Windham	1,435	3%	1%	4%	3%	1%	4%
Cumberland County	33,093	4%	2%	5%	5%	2%	5%

Note: Percentages represent the share of the total population in each respective jurisdiction.

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-8c.
Disability by Type and Share of Population, by Jurisdiction, District 3 and County, 2020

Jurisdiction	Residents with a Disability	Type of Difficulty					
		Hearing Difficulty	Vision Difficulty	Cognitive Difficulty	Ambulatory Difficulty	Self-Care Difficulty	Independent Living Difficulty
District 3	5,620	4%	1%	4%	4%	1%	3%
Brunswick	2,801	5%	2%	6%	6%	2%	6%
Chebeague Island	59	5%	2%	3%	6%	2%	5%
Cumberland	538	3%	1%	1%	3%	1%	4%
Freeport	570	2%	1%	3%	3%	2%	3%
Harpswell	598	8%	1%	2%	4%	1%	2%
Long Island	33	6%	2%	2%	3%	1%	4%
North Yarmouth	283	3%	1%	3%	3%	1%	1%
Pownal	87	2%	1%	2%	3%	1%	2%
Yarmouth	651	3%	1%	3%	3%	1%	3%
Cumberland County	33,093	4%	2%	5%	5%	2%	5%

Note: Percentages represent the share of the total population in each respective jurisdiction.

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-8d.
Disability by Type and Share of Population, by Jurisdiction, District 4 and County, 2020

Jurisdiction	Residents with a Disability	Type of Difficulty					
		Hearing Difficulty	Vision Difficulty	Cognitive Difficulty	Ambulatory Difficulty	Self-Care Difficulty	Independent Living Difficulty
District 4	6,421	6%	2%	7%	9%	3%	7%
Cape Elizabeth	990	2%	1%	2%	3%	2%	3%
South Portland	5,517	4%	2%	5%	7%	2%	4%
Westbrook	5,298	5%	2%	6%	7%	3%	8%
Cumberland County	33,093	4%	2%	5%	5%	2%	5%

Note: Percentages represent the share of the total population.

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-8e.
Disability by Type and Share of Population, by Jurisdiction, District 5 and County, 2020

Jurisdiction	Residents with a Disability	Type of Difficulty					
		Hearing Difficulty	Vision Difficulty	Cognitive Difficulty	Ambulatory Difficulty	Self-Care Difficulty	Independent Living Difficulty
District 5 - Portland	8,386	4%	2%	6%	5%	2%	6%
Cumberland County	33,093	4%	2%	5%	5%	2%	5%

Note: Percentages represent the share of the total population.
 Source: 2016-2020 American Community Survey 5-year estimates.

National origin and limited English proficiency (LEP). The share of the foreign born population in the county has slightly increased since 2010. Overall, 6% of the population in the county is foreign born (5.5% in 2010), although this share varies by district. The greatest proportion of foreign born residents in the county are from Asia (33%) and Africa (29%).

As shown in Figures IV-9a through IV-9e, Portland has the highest share of foreign born residents in Cumberland County (11%). Residents born in Africa make up nearly half of the city’s foreign born population (44%). Nearly a third of foreign born residents in Portland are from Asia (31%), followed by Europe (11%) and Latin America (9%).

The foreign born population makes up 5% of the District 1 population. Nearly four in ten foreign born residents were born in Asia (39%). Residents born in Europe (30%) and Latin America (14%) also make up substantial proportions of the district’s foreign born residents. District 2 and District 3 have the lowest shares of foreign born residents among all districts, at 3% and 4%, respectively. The greatest proportion of foreign born residents in District 2 were born in Europe (38%) while those born in Asia (38%) represent the greatest proportion of foreign born residents in District 3.

In District 4, residents born in Africa (36%) represent the greatest proportion of foreign born residents. Residents born in Asia (31%) comprise the next greatest share of foreign born residents, followed by those born in Europe (16%) and Latin America (11%).

Overall, residents born in Africa are most likely to reside in District 4 (36%) and Portland (12%), while Districts 1, 3, and 4 have the highest shares of foreign born residents from Latin America. All districts in Cumberland County have a relatively similar proportion of foreign born Asian residents (ranging from 31% to 39%).

Figure IV-9a.
Foreign Born Population by Jurisdiction, District 1 and County, 2020

	District 1	Baldwin	Bridgton	Gorham	Scarborough	Sebago	Standish	Cumberland County
Number	1,935	13	174	760	908	31	49	17,703
Share of Population	5%	1%	3%	4%	4%	2%	0%	6%
Place of Origin Distribution								
Europe	30%	31%	75%	27%	25%	61%	14%	20%
Asia	39%	0%	21%	34%	51%	0%	18%	33%
Africa	4%	0%	4%	9%	0%	0%	14%	29%
Oceania	1%	0%	0%	1%	2%	0%	0%	2%
Latin America	14%	0%	0%	18%	11%	0%	53%	10%
North America	11%	69%	0%	11%	12%	39%	0%	6%

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-9b.
Foreign Born Population by Jurisdiction, District 2 and County, 2020

	District 2	Casco	Falmouth	Gray	Harrison	Naples	New Gloucester	Raymond	Windham	Cumberland County
Number	1,813	18	852	188	85	76	116	95	383	17,703
Share of Population	3%	0%	7%	2%	3%	2%	2%	2%	2%	6%
Place of Origin Distribution										
Europe	38%	100%	35%	6%	27%	99%	14%	63%	49%	20%
Asia	36%	0%	37%	75%	41%	0%	66%	0%	19%	33%
Africa	2%	0%	0%	0%	0%	0%	8%	0%	6%	29%
Oceania	9%	0%	17%	7%	0%	0%	0%	0%	0%	2%
Latin America	4%	0%	0%	0%	11%	0%	0%	36%	7%	10%
North America	12%	0%	10%	12%	21%	1%	12%	1%	19%	6%

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-9c.
Foreign Born Population by Jurisdiction, District 3 and County, 2020

	District 3	Brunswick	Chebeague Island	Cumberland	Freeport	Harpwell	Long Island	North Yarmouth	Pownal	Yarmouth	Cumberland County
Number	2,357	965	25	450	275	182	20	76	20	344	17,703
Share of Population	4%	5%	5%	6%	3%	4%	7%	2%	1%	4%	6%
Place of Origin Distribution											
Europe	31%	33%	12%	26%	27%	72%	35%	29%	0%	20%	20%
Asia	38%	33%	16%	36%	44%	12%	65%	43%	15%	67%	33%
Africa	8%	17%	0%	0%	4%	0%	0%	0%	0%	6%	29%
Oceania	2%	4%	0%	2%	0%	2%	0%	0%	0%	0%	2%
Latin America	12%	7%	0%	36%	6%	0%	0%	28%	0%	5%	10%
North America	8%	6%	72%	0%	19%	14%	0%	0%	85%	2%	6%

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-9d.
Foreign Born Population by Jurisdiction, District 4 and County, 2020

	District 4	Cape Elizabeth	South Portland	Westbrook	Cumberland County
Number	4,246	413	2,456	1,377	17,703
Share of Population	8%	4%	10%	7%	6%
Place of Origin Distribution					
Europe	16%	32%	15%	15%	20%
Asia	31%	48%	28%	32%	33%
Africa	36%	4%	42%	35%	29%
Oceania	1%	6%	0%	0%	2%
Latin America	11%	0%	11%	15%	10%
North America	4%	12%	4%	2%	6%

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-9e.
Foreign Born Population by Jurisdiction, District 5 and County, 2020

	District 5 - Portland	Cumberland County
Number	7,352	17,703
Share of Population	11%	6%
Place of Origin Distribution		
Europe	11%	20%
Asia	31%	33%
Africa	44%	29%
Oceania	1%	2%
Latin America	9%	10%
North America	5%	6%

Source: 2016-2020 American Community Survey 5-year estimates.

Figures IV-10a through IV-10e show the number and share of population that has limited English proficiency²² (LEP) as well as the language distribution by district. Overall, about nearly 20,000 residents speak English less than “very well” in the county. Since 2010, the LEP population has decreased by approximately 1,700 people in the county. Among the LEP population, the most common spoken languages are Other Indo-European languages (44%), followed by Asian and Pacific Islander languages (19%) and Spanish (17%).

Portland has the largest share of LEP residents among the districts, 7,521 residents, representing 12% of the total population in the city. Since 2010, the LEP population living in Portland has nearly doubled (7% in 2010). The most commonly spoken languages among LEP populations in Portland are Other Indo-European languages (40%) and Other languages (26%).

In District 1, the LEP population represents 4% of the district’s total population—all jurisdictions have a lower share of LEP residents than the county overall. Scarborough (6%) has the greatest share of LEP residents among district jurisdictions, while Baldwin and Sebago have the lowest shares (1% each, respectively). The most commonly spoken language in District 1 among LEP residents is Other Indo-European languages (52%).

Similar to District 1, LEP populations account for 4% of the population among District 2 jurisdictions. Falmouth (7%) has the highest share of LEP residents in District 2 while Casco, Harrison, and Raymond all have the lowest share (1% each, respectively). Other Indo-European languages are the most common languages spoken in the district (56%).

In District 3, the LEP population accounts for 5% of the total district population. Cumberland (8%) and Brunswick (7%) have the highest shares of LEP residents, while Chebeague Island (<1%) and North Yarmouth (1%) have the lowest shares. Other Indo-European languages (51%) are also the most commonly spoken languages in District 3. In District 4, 9% of the district’s total population has limited English proficiency, with South Portland (11%) boasting the highest share of LEP residents and Cape Elizabeth the lowest (5%). The most common languages spoken among this population are Other languages (35%) and Other Indo-European languages (34%).

²² Limited English proficiency refers to anyone above the age of 5 who reported speaking English less than “very well” in the annual American Community Survey (ACS).

Figure IV-10a.
Limited English Proficiency by Language and Jurisdiction, District 1 and County, 2020

	District 1	Baldwin	Bridgton	Gorham	Scarborough	Sebago	Standish	Cumberland County
Number	2,298	8	208	707	1,138	16	221	19,767
Share of Population	4%	1%	4%	4%	6%	1%	2%	7%
Languages Other than English Spoken at Home								
Spanish	17%	0%	53%	16%	9%	19%	27%	17%
Other Indo-European languages	52%	100%	43%	43%	57%	81%	62%	44%
Asian and Pacific Islander languages	24%	0%	3%	33%	25%	0%	9%	19%
Other languages	7%	0%	1%	8%	9%	0%	2%	21%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-10b.
Limited English Proficiency by Language and Jurisdiction, District 2 and County, 2020

	District 2	Casco	Falmouth	Gray	Harrison	Naples	New Gloucester	Raymond	Windham	Cumberland County
Number	2,520	35	820	292	16	155	266	31	905	19,767
Share of Population	4%	1%	7%	4%	1%	4%	5%	1%	5%	7%
Languages Other than English Spoken at Home										
Spanish	18%	66%	16%	18%	0%	9%	7%	0%	24%	17%
Other Indo-European languages	56%	34%	35%	71%	50%	91%	58%	100%	64%	44%
Asian and Pacific Islander languages	17%	0%	26%	8%	50%	0%	34%	0%	10%	19%
Other languages	8%	0%	23%	3%	0%	0%	1%	0%	1%	21%

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-10c.
Limited English Proficiency by Language and Jurisdiction, District 3 and County, 2020

	District 3	Brunswick	Chebeague Island	Cumberland	Freeport	Harpswell	Long Island	North Yarmouth	Pownal	Yarmouth	Cumberland County
Number	2,708	1,295	2	603	386	133	6	34	43	206	19,767
Share of Population	5%	7%	0%	8%	5%	3%	2%	1%	3%	2%	7%
Languages Other than English Spoken at Home											
Spanish	26%	24%	0%	46%	15%	26%	33%	29%	37%	3%	17%
Other Indo-European languages	51%	48%	100%	40%	47%	62%	67%	68%	63%	88%	44%
Asian and Pacific Islander languages	18%	21%	0%	10%	38%	12%	0%	3%	0%	0%	19%
Other languages	5%	7%	0%	3%	0%	0%	0%	0%	0%	8%	21%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-10d.
Limited English Proficiency by Language and Jurisdiction, District 4 and County, 2020

	District 4	Cape Elizabeth	South Portland	Westbrook	Cumberland County
Number	4,720	426	2,725	1,569	19,767
Share of Population	9%	5%	11%	9%	7%
Languages Other than English Spoken at Home					
Spanish	13%	10%	12%	15%	17%
Other Indo-European languages	34%	44%	30%	39%	44%
Asian and Pacific Islander languages	18%	40%	16%	14%	19%
Other languages	35%	5%	41%	32%	21%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Figure IV-10e.
Limited English Proficiency by Language and Jurisdiction, District 5 and County, 2020

	District 5 - Portland	Cumberland County
Number	7,521	19,767
Share of Population	12%	7%
Languages Other than English Spoken at Home		
Spanish	15%	17%
Other Indo-European languages	40%	44%
Asian and Pacific Islander languages	19%	19%
Other languages	26%	21%

Source: 2016-2020 American Community Survey 5-year estimates and Root Policy Research.

Segregation and Integration

In housing markets with opportunity, residents have the ability to move freely to accommodate their changing employment situations, educational preferences, and lifestyle needs. Limited housing mobility can result in racial and ethnic segregation, as history demonstrates. Segregation can also occur because residents seek out communities where they feel comfortable, where family and friends reside, and where cultural enclaves exist. Most critical is how racial and ethnic segregation relates to economic opportunity.

To that end, this analysis of segregation and integration is followed by an analysis of patterns of poverty and how high-poverty areas relate to racial and ethnic segregation. The Access to Opportunity chapter in Section V builds upon this analysis by examining access to quality educational and employment centers—and the role of public transportation.

The following maps show the geographic distribution of non-White and Hispanic groups in Cumberland County.

The upper end of the ranges that determine the shading in the maps corresponds to:

- Half of the overall county proportion;
- The overall county proportion;
- 1.5 times the county proportion;
- Greater than 1.5 times the county proportion.

For example, African American/Black residents represent 3.9% of the county's population overall. In the Figure IV-11 map, the first range shows census tracts with less than half of the overall county proportion that is African American/Black. The second range shows census tracts whose proportion is between half of the county share, to the county share. The third range shows census tracts whose African American/Black population ranges between the county share and 1.5 times the county share. The fourth range shows census tracts whose African American/Black population exceeds 1.5 times the county share.

Key takeaways from the maps include:

- African American/Black residents are primarily concentrated in Portland, as well as the west and southeast areas of Westbrook and the west side of South Portland. There are also slight concentrations in parts of Scarborough and Brunswick (Figure IV-11).
- Latino/Hispanic residents are also primarily concentrated in Portland, the west side of South Portland, and the central area of Brunswick. Other slight concentrations of Latino/Hispanic residents are found in Falmouth, Westbrook, Windham, Scarborough and other parts of Brunswick (Figure IV-12).
- Comparing Figures IV-11 and II-12, Hispanic residents appear to be more dispersed throughout the county while African American/Black residents are more concentrated in and around Portland.
- Concentrations of Asian residents are found throughout Portland, eastern areas in Westbrook, the east side of Falmouth, the west side of South Portland, and the central areas of both Scarborough and Brunswick (Figure IV-13).
- Overall, residents of color in Cumberland County are primarily concentrated in Portland, South Portland, and Westbrook, as well as parts of Scarborough and Brunswick. The rest of Cumberland County is largely non-Hispanic White (Figure IV-14).

Figure IV-11.
Percent African
American/ Black by
Census Tract, 2020

Note:

Breaks represent 50%, 100%, and 150% of the county proportion of African American/Black residents (3.9%).

Source:

U.S. Census Bureau 2016-2020
American Community Survey 5-year
estimates.

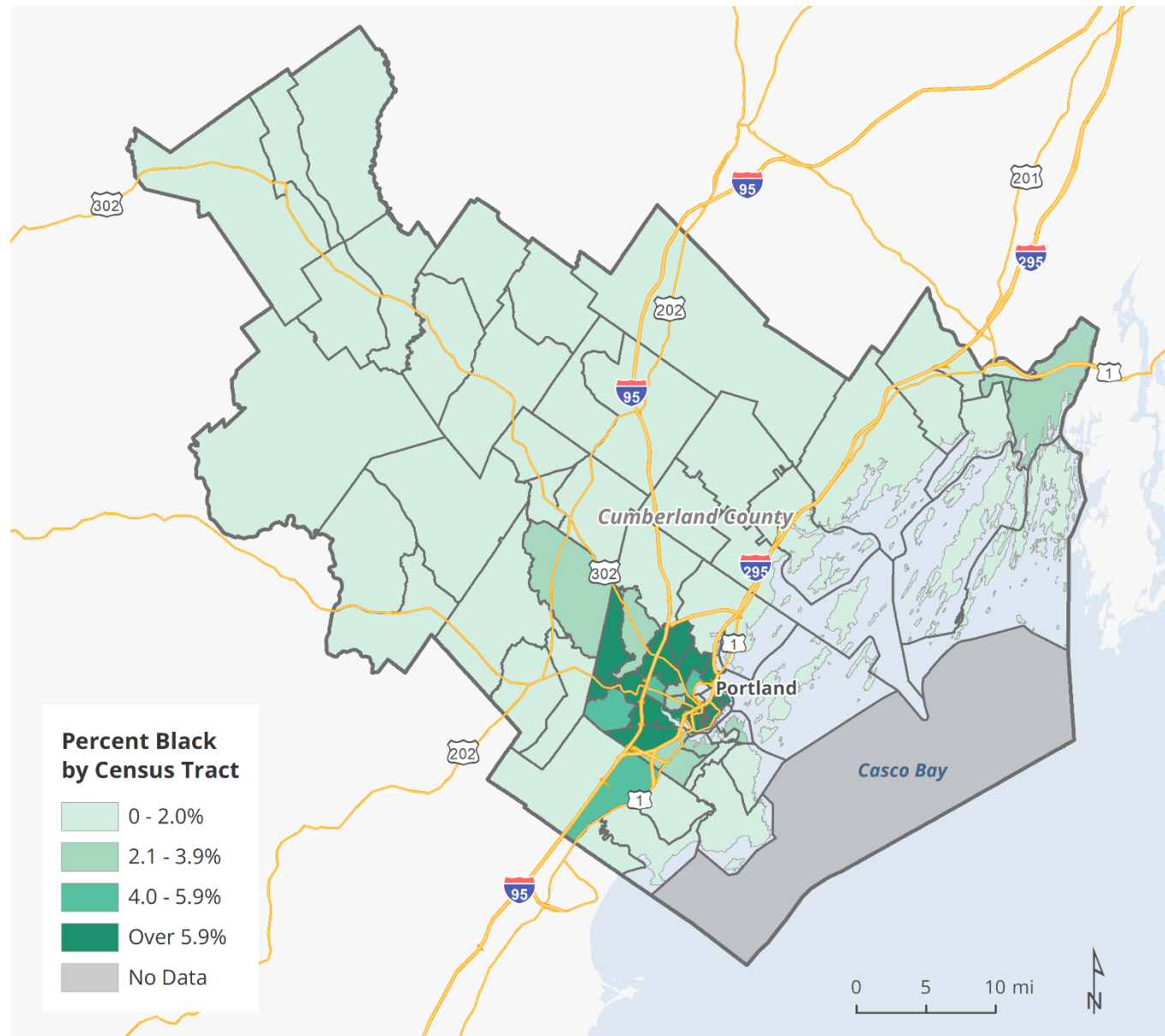


Figure IV-12.
Percent Hispanic by
Census Tract, 2020

Note:
Breaks represent 50%, 100%, and
150% of the county proportion of
Latino/Hispanic residents (2.6%).

Source:
U.S. Census Bureau 2016-2020
American Community Survey 5-year
estimates.

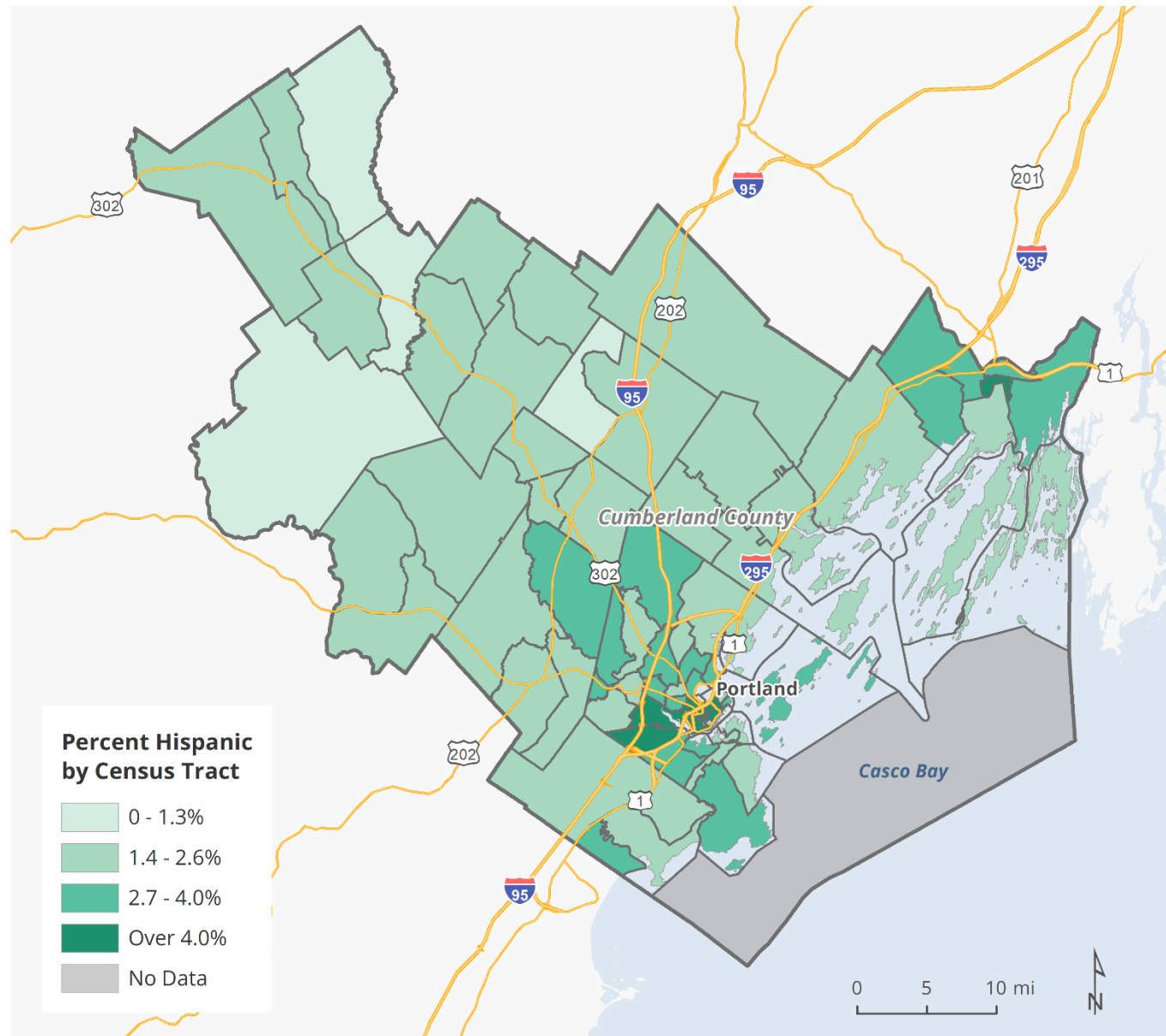
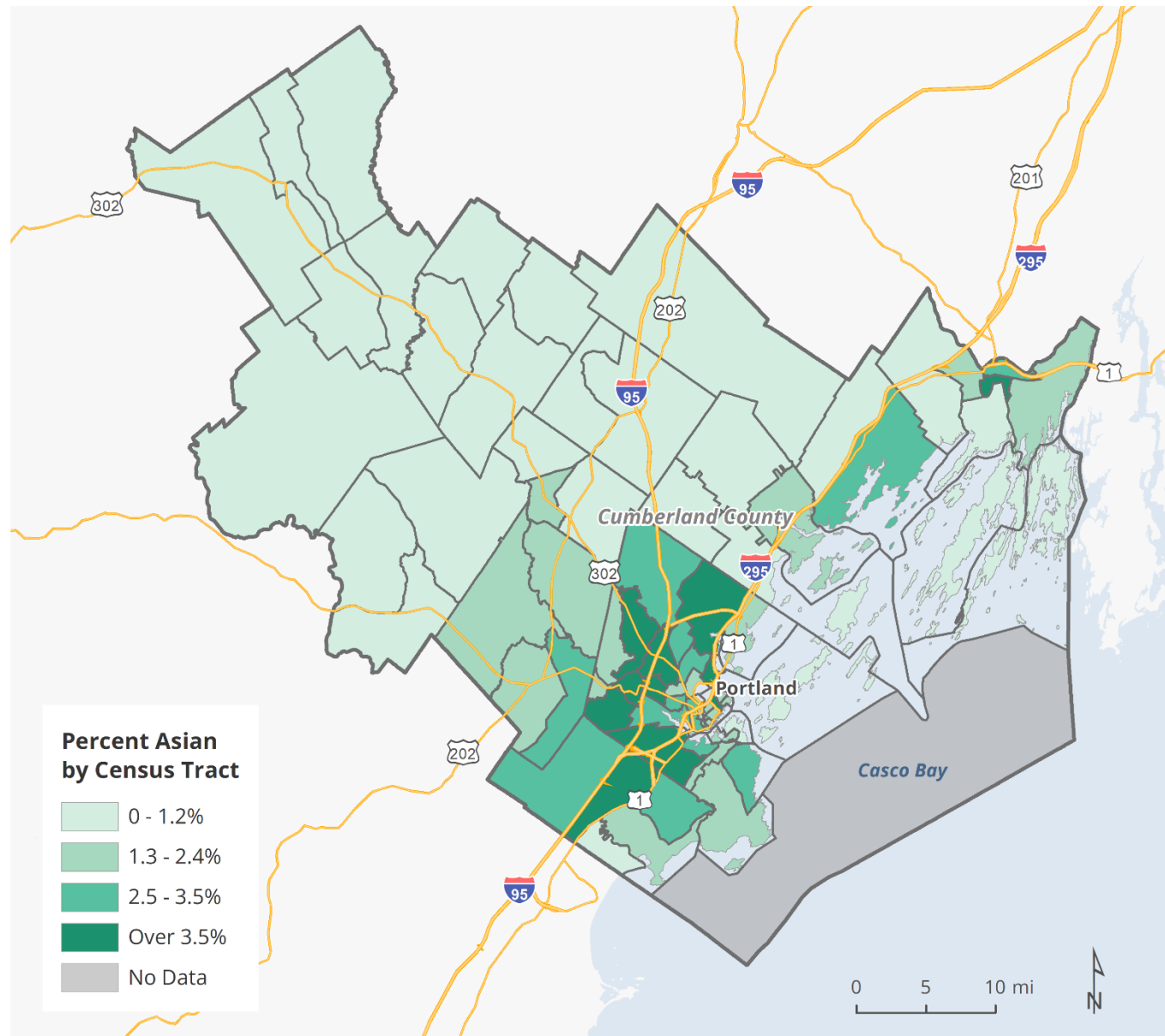


Figure IV-13.
Percent Asian by
Census Tract, 2020

Note:
Breaks represent 50%, 100%, and
150% of the county proportion of
Asian residents (2.4%).

Source:
U.S. Census Bureau 2016-2020
American Community Survey 5-year
estimates.



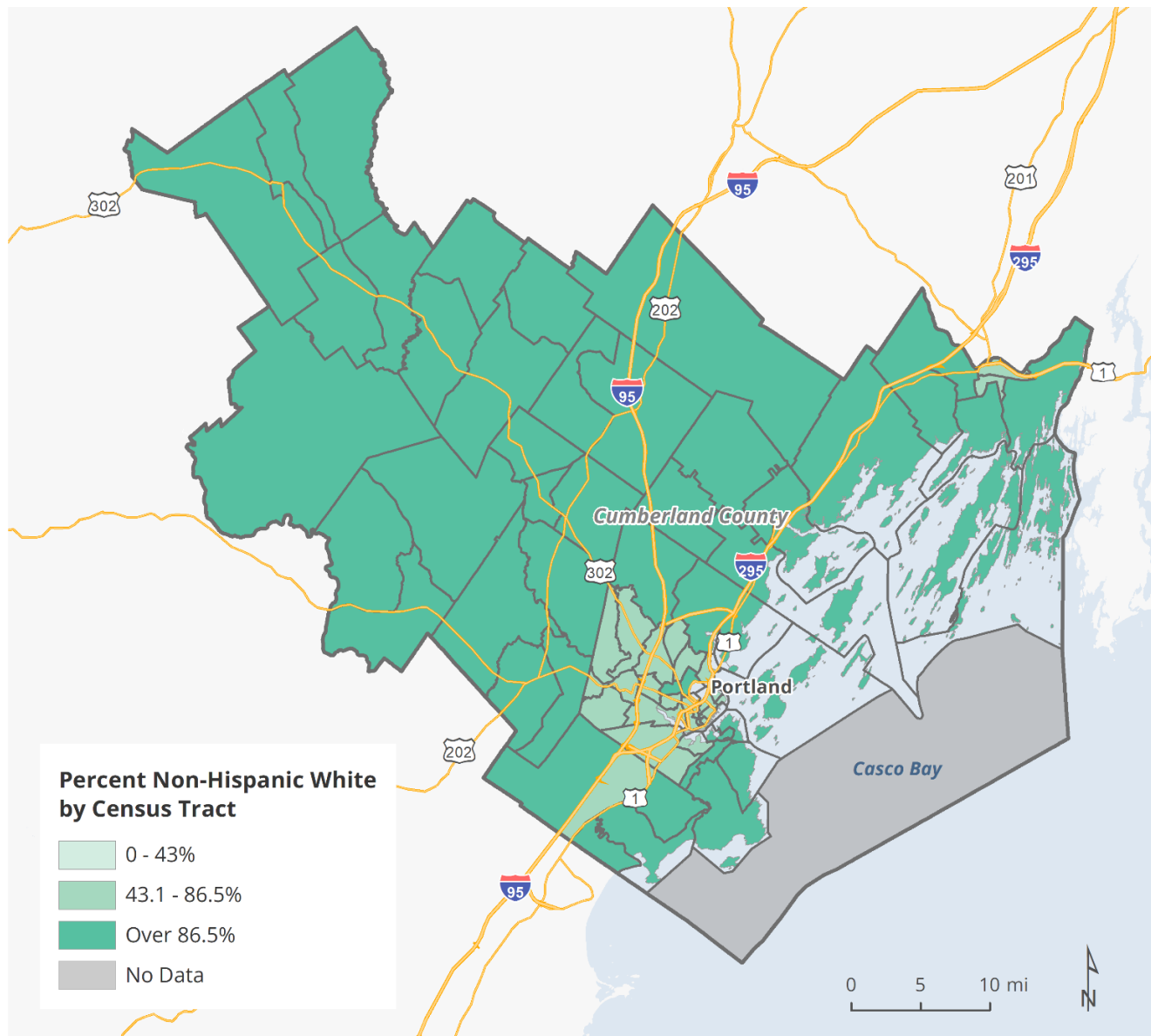
**Figure IV-14.
Percent Non-
Hispanic White by
Census Tract, 2020**

Note:

Breaks represent 50%, 100%, and 150% of the county proportion of Non-Hispanic White residents (86.5%).

Source:

U.S. Census Bureau 2016-2020 American Community Survey 5-year estimates.

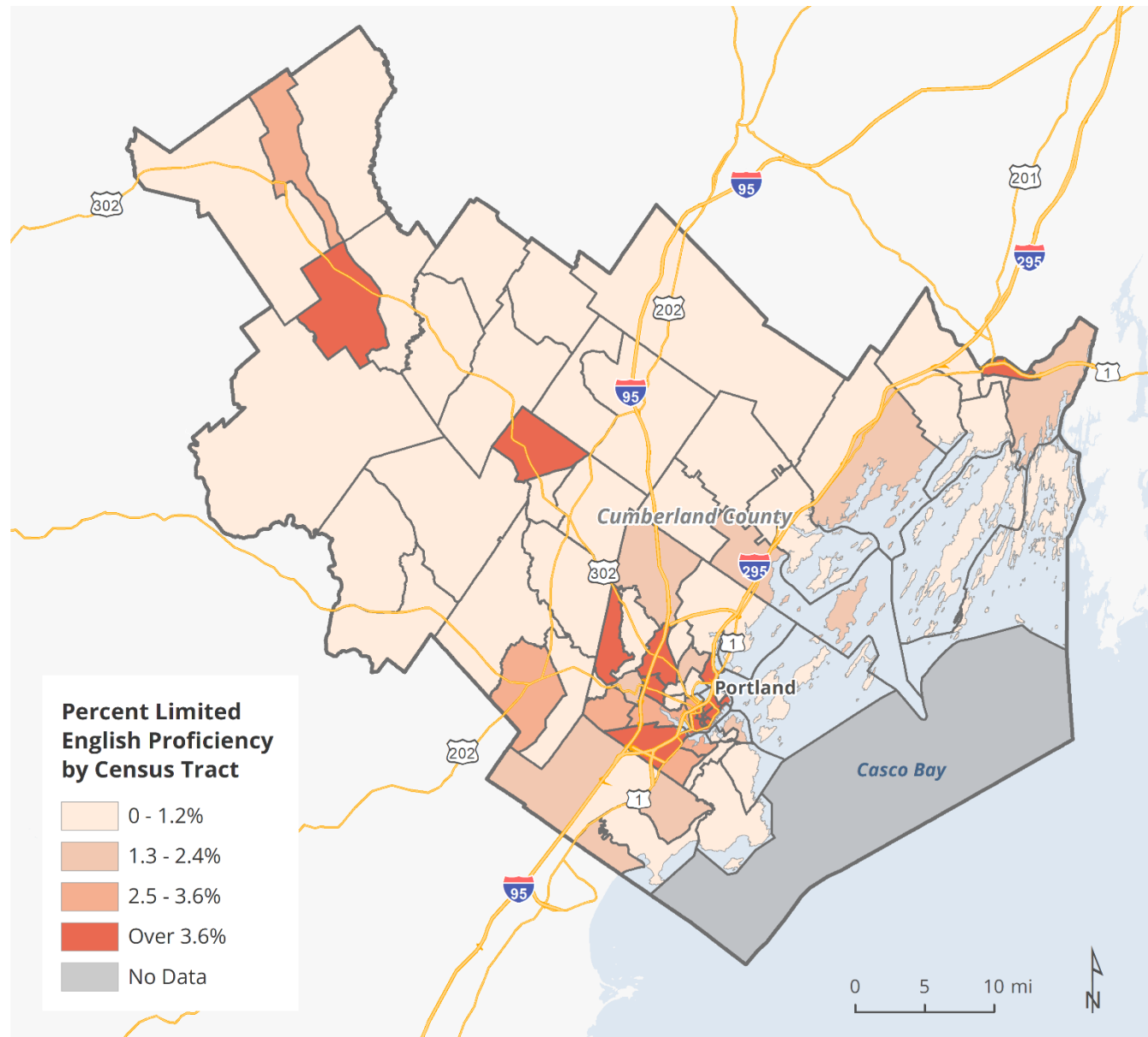


Figures IV-15 and IV-16 show the distribution of residents with Limited English Proficiency (LEP) and foreign-born residents. These serve as proxies for the protected class of national origin. The largest concentrations of LEP residents are located throughout Portland, the western areas of South Portland, Westbrook, and Naples, central area of Brunswick, and the northern area of Windham. Foreign-born residents are mainly concentrated in areas throughout Portland, the west sides of South Portland and Westbrook, and central Brunswick.

**Figure IV-15.
Percent Limited English
Proficiency by Census
Tract, 2020**

Note:
Breaks represent 50%, 100%, and 150% of
the county proportion of LEP residents
(2.4%).

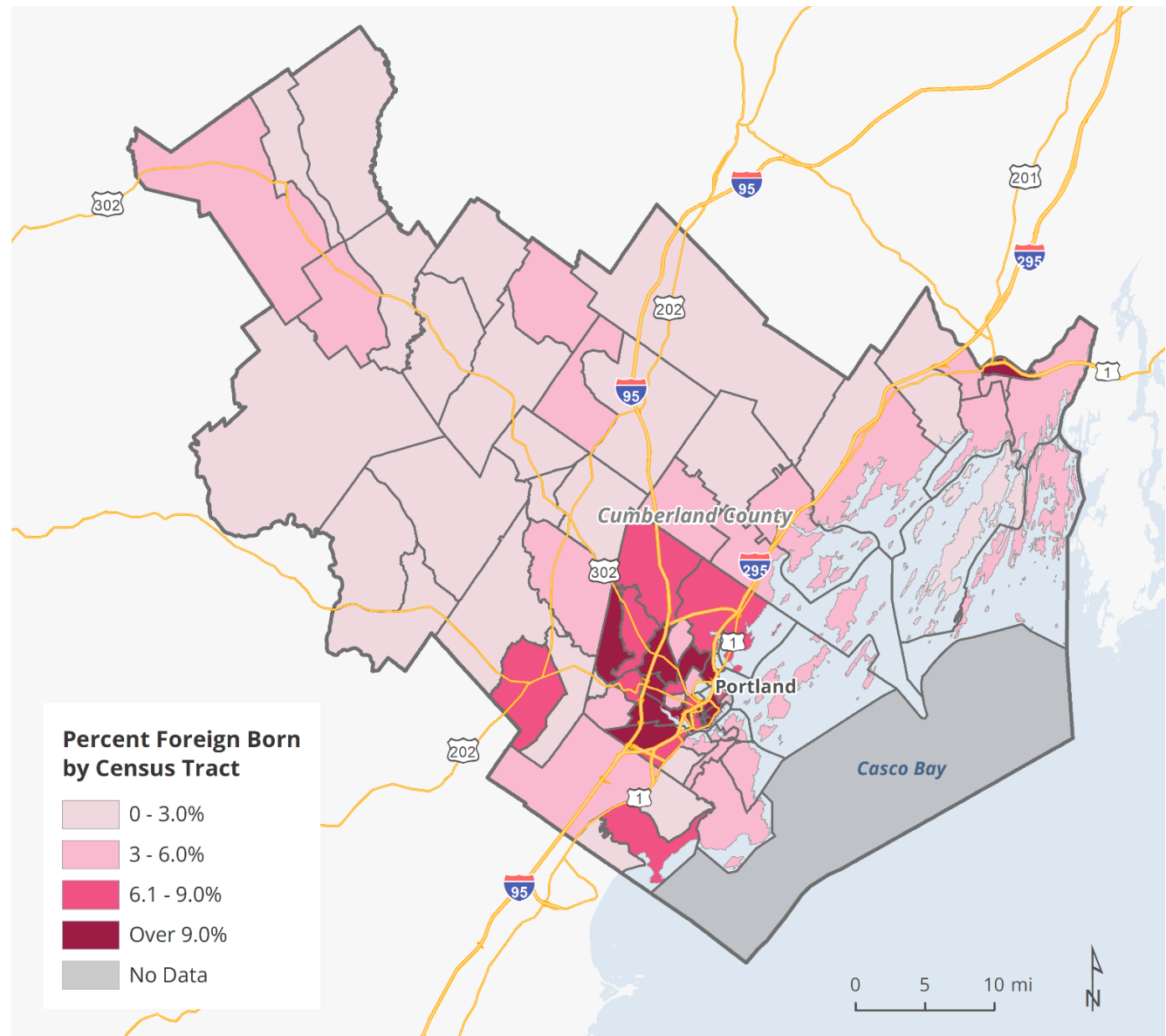
Source:
U.S. Census Bureau 2016-2020 American
Community Survey 5-year estimates.



**Figure IV-16.
Percent Foreign Born by
Census Tract, 2020**

Note:
Breaks represent 50%, 100%, and 150% of
the county proportion of foreign born
residents (6.0%).

Source:
U.S. Census Bureau 2016-2020 American
Community Survey 5-year estimates.



Severity of segregation. A common measure of segregation used in fair housing studies is the dissimilarity index (DI). The DI measures the degree to which two distinct groups are evenly distributed across a geographic area, usually a county, or a larger city. DI values range from 0 to 100—where 0 is perfect integration and 100 is complete segregation.

The DI represents a “score” where values between 0 and 39 indicate low segregation, values between 40 and 54 indicate moderate segregation, and values between 55 and 100 indicate high levels of segregation. The DI represents the percentage of a group’s population that would have to move for each area in the county/city to have the same percentage of that group as the county/city overall.

It is important to note that the DI is a broad index that is a starting point for understanding the magnitude of segregation. Like all indices, the DI has some weaknesses: First, the DI typically uses non-Hispanic White residents as the primary comparison group. That is, all DI values compare racial and ethnic groups against the distribution of non-Hispanic White residents. While this is appropriate in a region like Cumberland County, with a majority population that is non-Hispanic White, it can mask nuances in segregation in other types of jurisdictions.

Another limitation of the DI is that it can conceal practices that lead to racial and ethnic exclusion. Communities without much diversity typically have very low DI ratings, while counties with the most diversity will show high levels of dissimilarity. Thus, a “low” dissimilarity index for a jurisdiction is not always a positive if it indicates that racial and ethnic minorities face barriers to entry in a community.

Figure III-17 shows trends in the DI for Cumberland County and Portland.

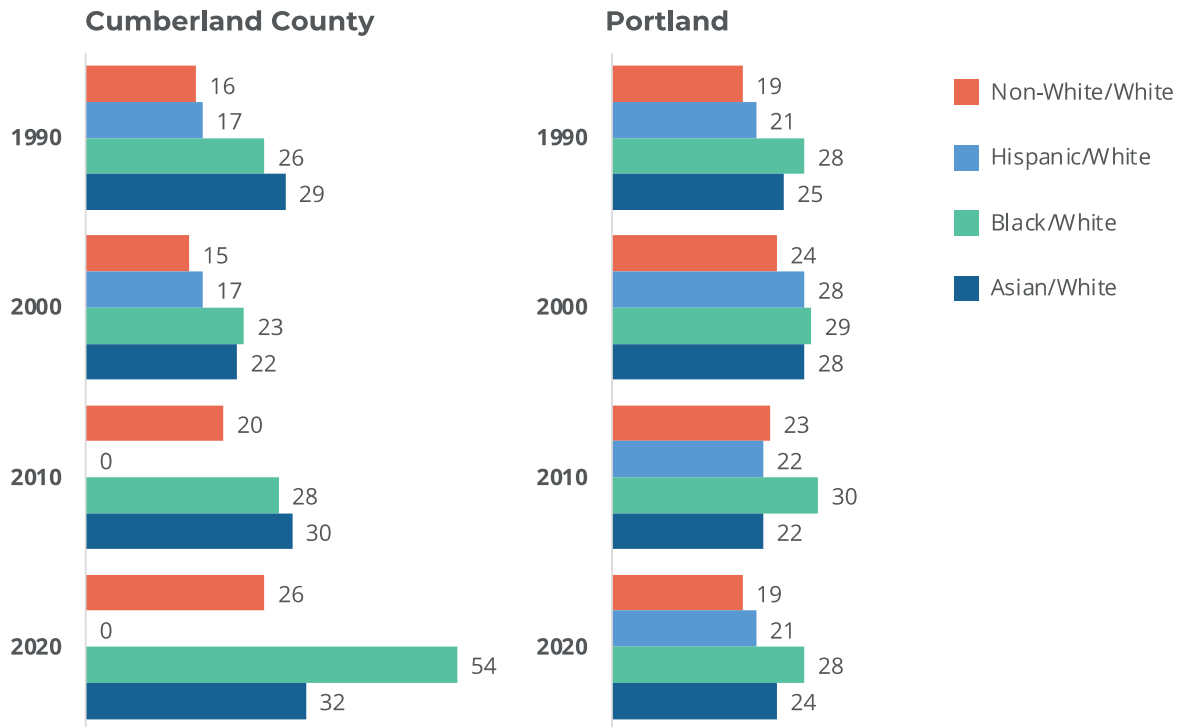
Trends in the DI for Cumberland County since 1990 show that:

- Segregation among White residents and Non-White residents remains low, but is on a steady and increasing trend.
- Segregation between Asian and White residents is low (although on the high end of low) and is also on an upward trend.
- The lowest segregation is among Hispanic and White residents, which has remained in the low range since 1990 and increased only recently, between 2010 and 2020.
- Segregation among White and African American/Black residents increased significantly between 2010 and 2020, after staying in the low range between 1990 and 2010. The DI currently measures Black/White segregation on the high end of “moderate,” with trends indicating it could be “high” soon. This increase in segregation appears to be driven by large increases in African American/Black residents in a handful of Census tracts in the county, notably Census tract 30.02 in South Portland.

For Portland, segregation remains low for all races and ethnicities and has been stable since 1990 for all.

Figure IV-17.
Dissimilarity Index, Cumberland County and Portland, 2010 and 2020

Jurisdiction	Non-White/White		Hispanic/White		Black/White		Asian/White	
	2010	2020	2010	2020	2010	2020	2010	2020
	Cumberland County	20	26	17	21	28	54	30
Portland	23	19	22	21	30	28	22	24



Source: U.S. Census Bureau 2006-2010 and 2014-2018 American Community Survey 5-year estimates, and Root Policy Research.

Income and Poverty

The median household income in the county increased by 37% over the last 10 years, growing from around \$55,700 to \$76,000. In Portland, the median household income grew at a slightly faster rate than the county, increasing by 39% over the same time period. However, the city's median income is about \$14,000 lower than the county overall.

As shown in Figure IV-18a, Bridgton and Scarborough experienced the greatest increases in household median income (37% each), while Baldwin experienced the smallest increase in District 1 (6%). As shown in Figure IV-18b, Windham and Falmouth, which have the highest incomes in District 2, experienced the greatest increases in median household income (43% and 39%, respectively). Conversely, Naples and Casco, which have the lowest median household incomes in the district, saw the smallest increases in median household income (4% and 1%, respectively).

In District 3, Long Island (72%) and Freeport (48%) experienced the greatest increases in household median income (Figure IV-18c). Several jurisdictions in District 3 saw their household median income increase by at least 33% over the last ten years. The only jurisdiction that saw an income contraction was Chebeague Island, which experienced an 11% decrease between 2010 and 2020. In District 4, household median income increased in Cape Elizabeth and Westbrook by 66% and 54%, respectively (Figure IV-18d). The household median income in South Portland, the lowest in the district, increased at a slower rate than the county (32%).

Figure IV-18a.
Median Household Income
by Jurisdiction, District 1
and County, 2010 and 2020

Source:
 2006-2010 and 2016-2020 American
 Community Survey 5-year estimates.

	2010	2020	Percent Change
District 1	n/a	n/a	n/a
Baldwin	\$56,875	\$60,500	6%
Bridgton	\$42,420	\$58,203	37%
Gorham	\$70,786	\$88,958	26%
Scarborough	\$74,886	\$102,742	37%
Sebago	\$48,281	\$59,706	24%
Standish	\$64,797	\$75,773	17%
Cumberland County	\$55,658	\$76,014	37%

**Figure IV-18b.
Median Household
Income by Jurisdiction,
District 2 and County,
2010 and 2020**

Source:
2006-2010 and 2016-2020 American
Community Survey 5-year estimates.

	2010	2020	Percent Change
District 2	n/a	n/a	n/a
Casco	\$51,630	\$52,188	1%
Falmouth	\$87,455	\$121,389	39%
Gray	\$62,664	\$82,074	31%
Harrison	\$41,622	\$47,548	14%
Naples	\$52,824	\$54,882	4%
New Gloucester	\$64,564	\$74,150	15%
Raymond	\$64,444	\$71,307	11%
Windham	\$57,302	\$82,188	43%
Cumberland County	\$55,658	\$76,014	37%

**Figure IV-18c.
Median Household
Income by
Jurisdiction, District
3 and County, 2010
and 2020**

Source:
2006-2010 and 2016-2020 American
Community Survey 5-year
estimates.

	2010	2020	Percent Change
District 3	n/a	n/a	n/a
Brunswick	\$50,117	\$66,699	33%
Chebeague Island	\$57,381	\$50,833	-11%
Cumberland	\$85,838	\$115,898	35%
Freeport	\$60,500	\$89,484	48%
Harpswell	\$65,030	\$81,702	26%
Long Island	\$44,583	\$76,875	72%
North Yarmouth	\$70,881	\$93,967	33%
Pownal	\$66,838	\$90,556	35%
Yarmouth	\$73,950	\$88,295	19%
Cumberland County	\$55,658	\$76,014	37%

**Figure IV-18d.
Median Household Income
by Jurisdiction, District 4
and County, 2010 and 2020**

Source:
2006-2010 and 2016-2020 American
Community Survey 5-year estimates.

	2010	2020	Percent Change
District 4	n/a	n/a	n/a
Cape Elizabeth	\$76,741	\$127,363	66%
South Portland	\$51,066	\$67,198	32%
Westbrook	\$46,112	\$71,183	54%
Cumberland County	\$55,658	\$76,014	37%

**Figure IV-18e.
Median Household Income
by Jurisdiction, District 5
and County, 2010 and 2020**

	2010	2020	Percent Change
District 5 - Portland	\$44,422	\$61,695	39%
Cumberland County	\$55,658	\$76,014	37%

Source:
2006-2010 and 2016-2020 American Community
Survey 5-year estimates.

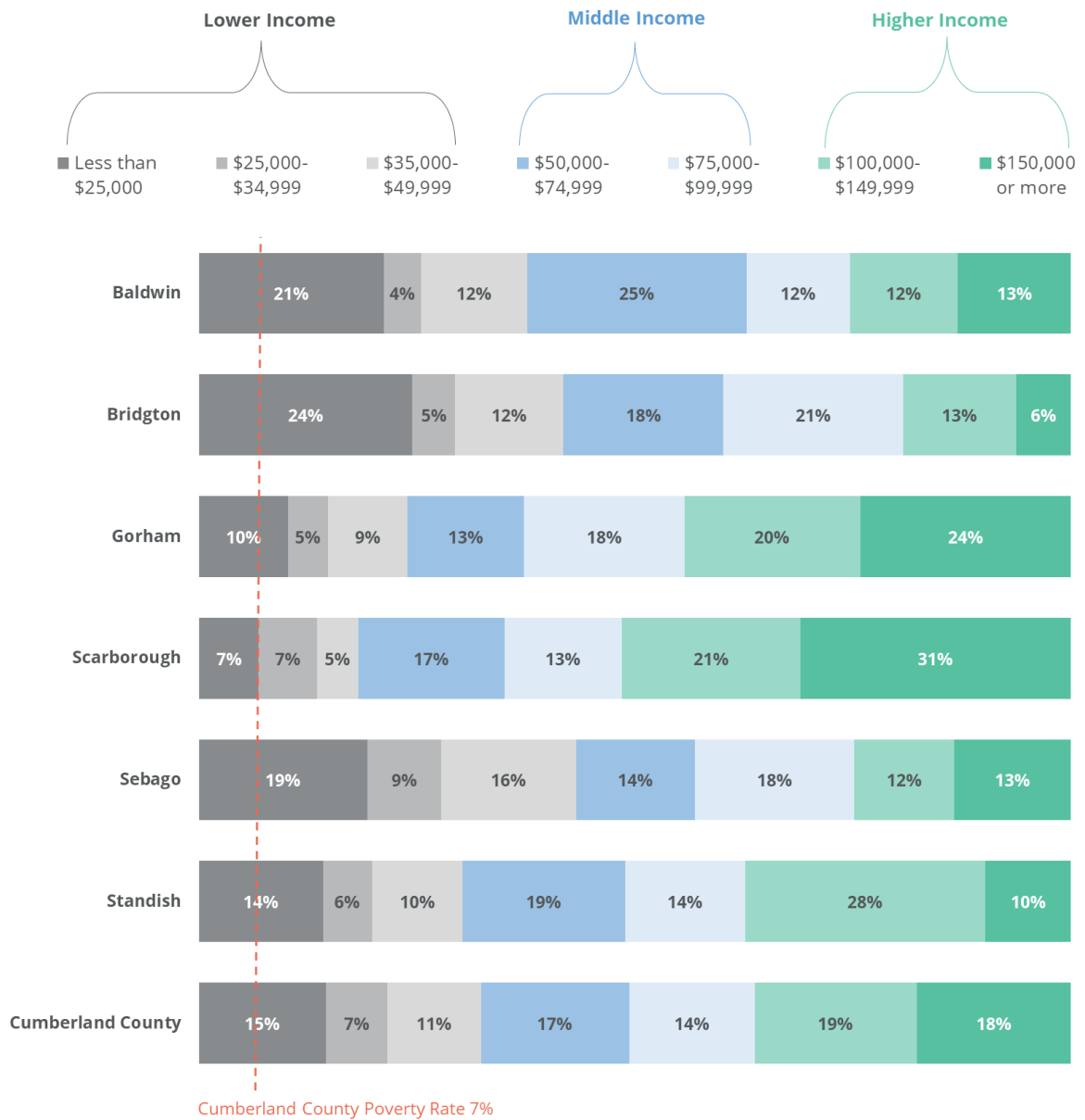
Figures IV-19a through IV-19e show the income distribution by jurisdiction and county. Jurisdictions with a higher percentage of high income households than the county overall include:

- District 1—Scarborough, Gorham, and Standish;
- District 2—Falmouth, Gray, New Gloucester, and Raymond;
- District 3—Cumberland, Freeport, North Yarmouth, Yarmouth, Long Island, Pownal, and Harpswell; and
- District 4—Cape Elizabeth.

Jurisdictions with a higher percentage of low income households than the county overall include:

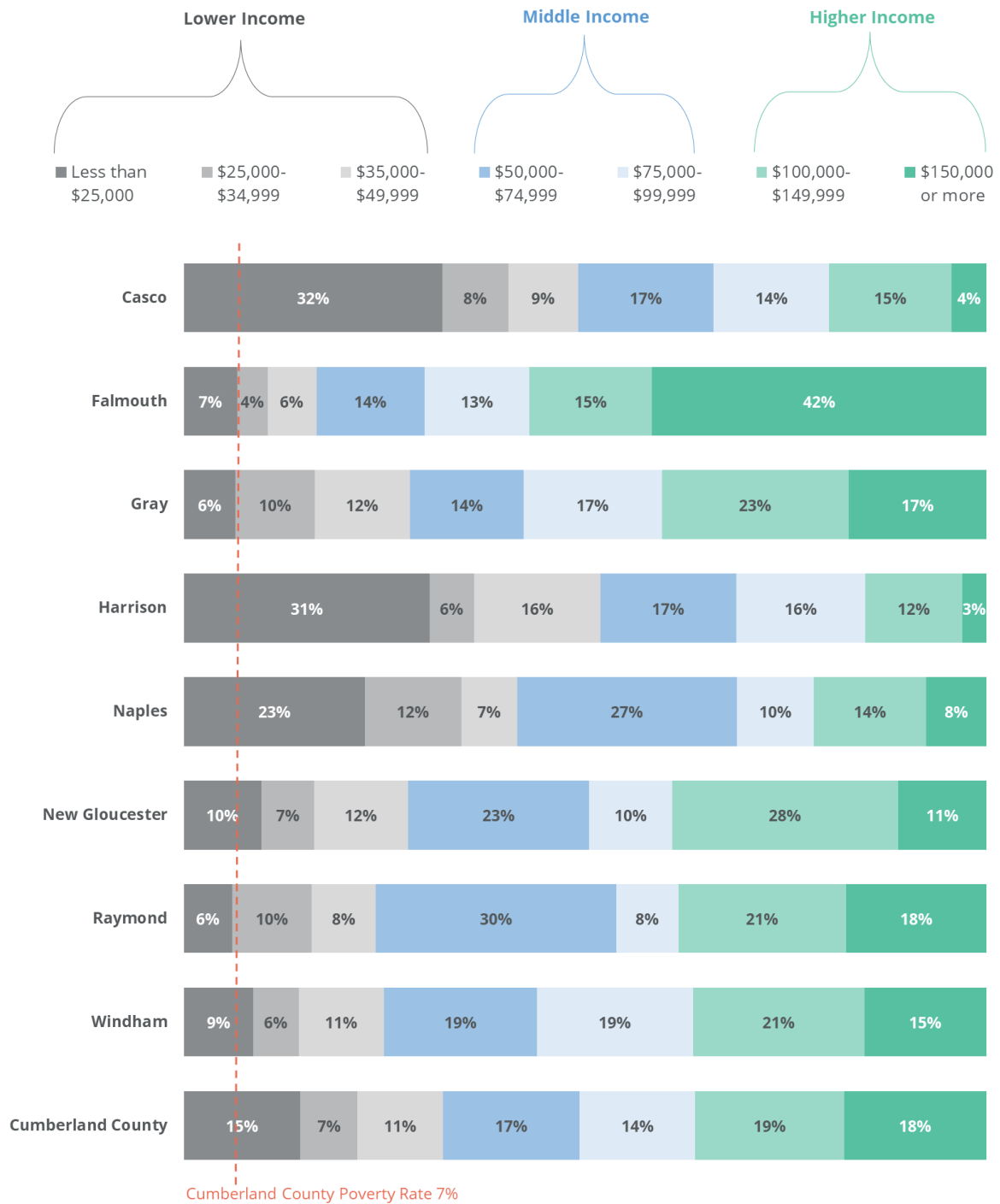
- District 1—Bridgton, Baldwin, and Sebago;
- District 2—Harrison, Casco, and Naples;
- District 3—Chebeague Island and Brunswick;
- District 4—Westbrook and South Portland; and
- District 5—Portland.

Figure IV-19a.
Income Distribution by Jurisdiction, District 1 and County, 2020



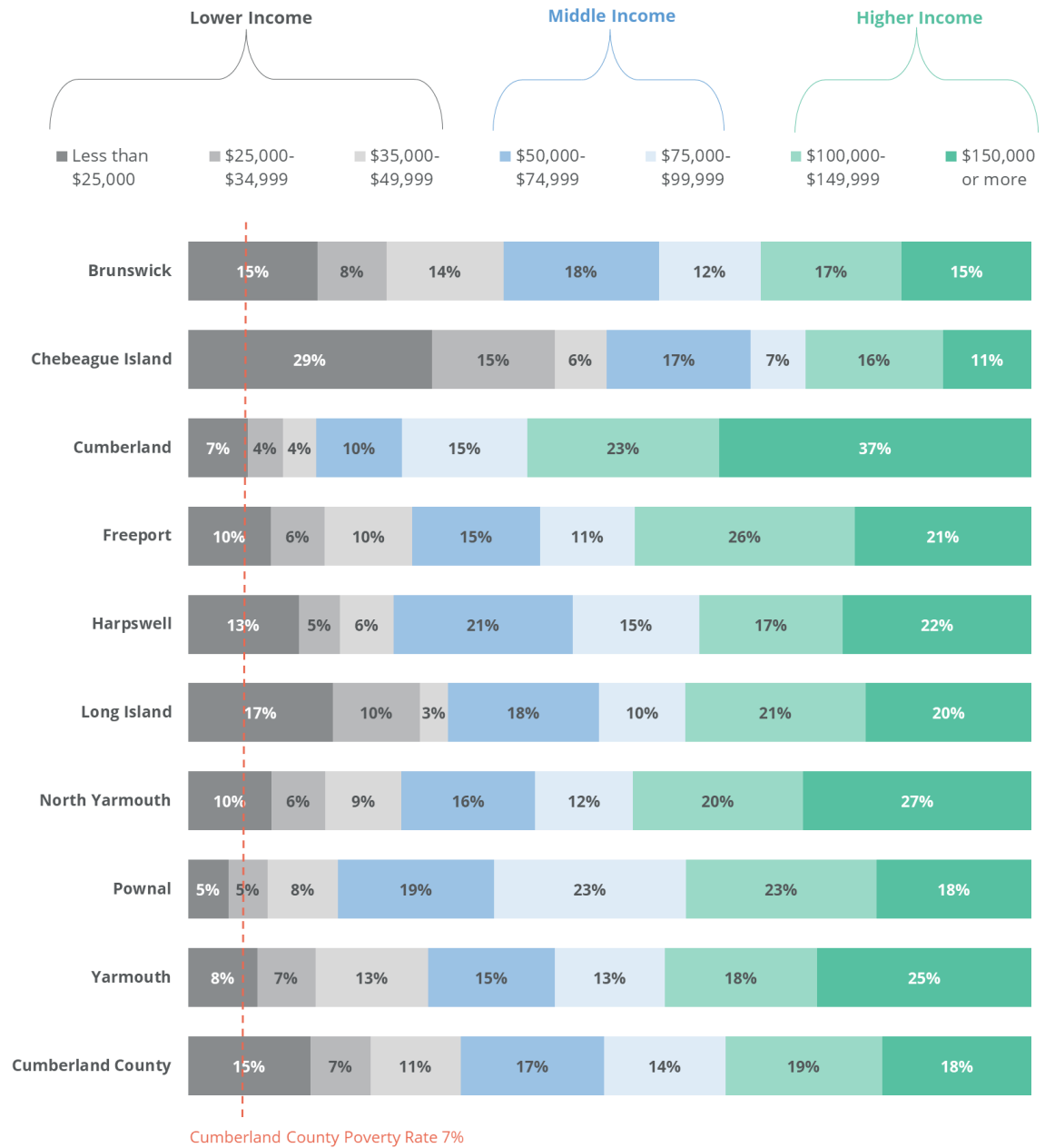
Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-19b.
Income Distribution by Jurisdiction, District 2 and County, 2020



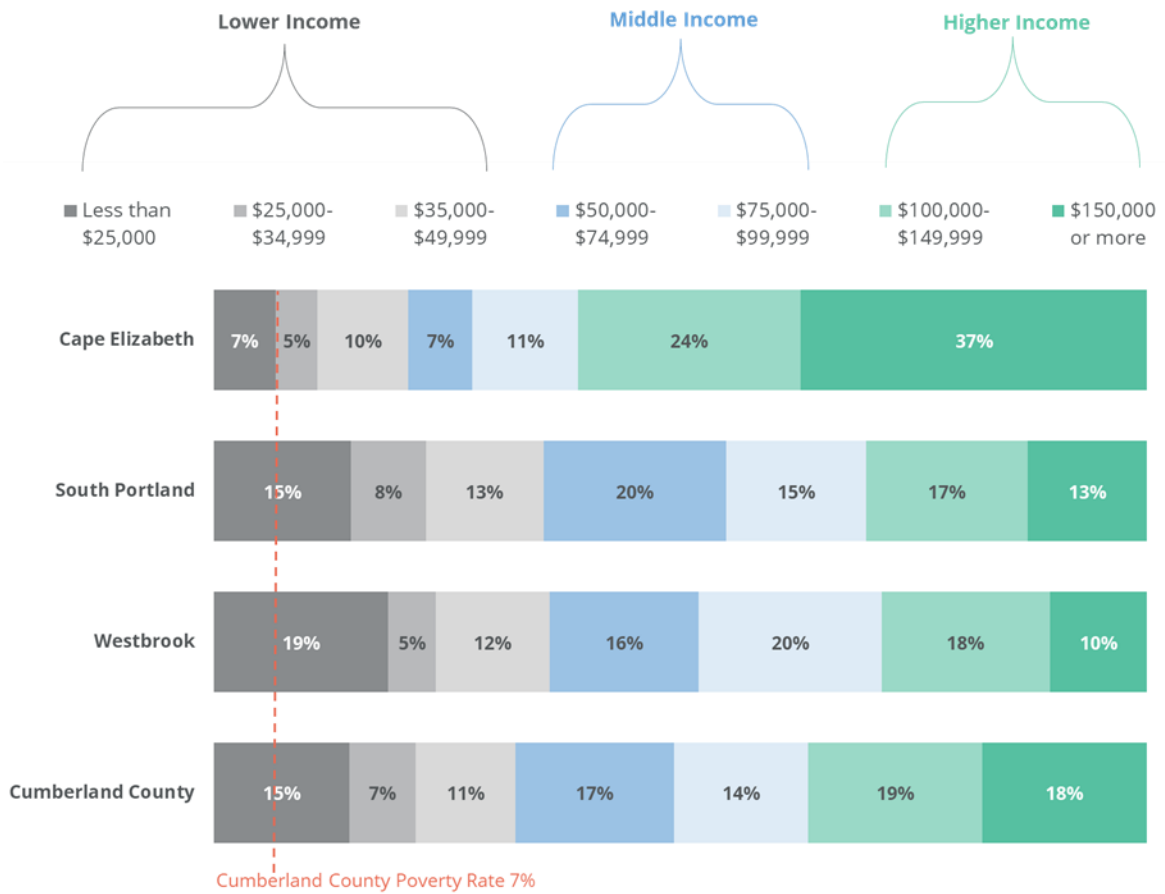
Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-19c.
Income Distribution by Jurisdiction, District 3 and County, 2020



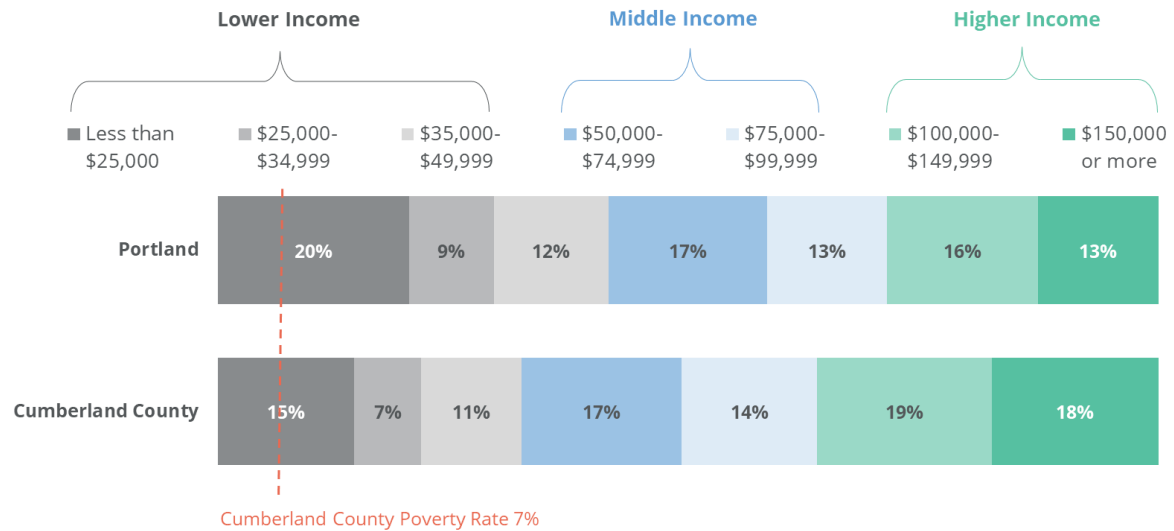
Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-19d.
Income Distribution by Jurisdiction, District 4 and County, 2020



Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-19e.
Income Distribution by Jurisdiction, District 5 and County, 2020



Source: 2016-2020 American Community Survey 5-year estimates.

Figures IV-20a through IV-20e show the number of *individuals* and *families* living in poverty. Between 2012 and 2020, the number of individuals and families experiencing poverty decreased in the county, with approximately 6,600 people and 1,800 families no longer living in poverty. Within the county, Portland has the largest number of residents and families living in poverty (9,084 and 996, respectively). However, they experienced the largest numerical decrease in persons and families living in poverty over the past eight years (3,444 and 837, respectively).

In addition to Portland, the largest decreases in persons living in poverty at the district level between 2012 and 2020 were seen in District 4 (1,344) and District 2 (1,299). Similarly, District 4 (485) and District 2 (346) also saw the greatest decrease in families experiencing poverty. All districts saw a decrease in the number of families experiencing poverty between 2012 and 2020.

Among all districts, District 1 has the fewest Individuals and families living in poverty (2,539 and 386). Jurisdictions that saw the greatest numerical increase in persons living in poverty among all districts include Yarmouth (555), Gorham (322), and Casco (157). Additionally, Yarmouth (154), Gorham (97), and Freeport (65) saw the greatest increase in families experiencing poverty.

Figure IV-20a.
Change in Persons Living in Poverty by Jurisdiction, District 1 and County, 2012 to 2020

Jurisdiction	2012		2020		Numerical Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 1	2,683	423	2,539	386	-144	-36
Baldwin	183	45	163	23	-20	-22
Bridgton	742	108	306	33	-436	-75
Gorham	425	41	747	138	322	97
Scarborough	710	93	569	72	-141	-20
Sebago	136	25	171	16	35	-9
Standish	487	110	583	104	96	-7
Cumberland County	30,315	4,995	23,726	3,162	-6,589	-1,832

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-20b.
Change in Persons Living in Poverty by Jurisdiction, District 2 and County, 2012 and 2020

Jurisdiction	2012		2020		Numerical Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 2	5,344	941	4,045	596	-1,299	-346
Casco	503	114	660	64	157	-50
Falmouth	466	67	328	70	-138	3
Gray	947	160	364	25	-583	-135
Harrison	353	60	416	48	63	-12
Naples	583	75	465	85	-118	10
New Gloucester	389	72	506	117	117	45
Raymond	391	67	157	19	-234	-48
Windham	1,712	326	1,149	167	-563	-158
Cumberland County	30,315	4,995	23,726	3,162	-6,589	-1,832

Note: 2012 is the oldest 5-year estimate.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-20c.
Change in Persons Living in Poverty by Jurisdiction, District 3 and County, 2012 and 2020

Jurisdiction	2012		2020		Numerical Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 3	4,107	681	3,748	568	-359	-113
Bruswick	2,002	321	1,649	118	-353	-203
Chebeague Island	27	10	65	7	38	-3
Cumberland	217	35	262	36	45	2
Freeport	479	55	288	120	-191	65
Harpswell	807	161	333	66	-474	-96
Long Island	41	10	7	0	-34	-10
North Yarmouth	95	30	225	22	130	-8
Pownal	126	17	51	3	-75	-14
Yarmouth	313	42	868	196	555	154
Cumberland County	30,315	4,995	23,726	3,162	-6,589	-1,832

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-20d.
Change in Persons Living in Poverty by Jurisdiction, District 4 and County, 2012 and 2020

Jurisdiction	2012		2020		Numerical Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 4	5,650	1,124	4,306	638	-1,344	-485
Cape Elizabeth	293	59	317	67	24	8
South Portland	2,777	524	1,725	216	-1,052	-308
Westbrook	2,580	541	2,264	355	-316	-186
Cumberland County	30,315	4,995	23,726	3,162	-6,589	-1,832

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-20e.
Change in Persons Living in Poverty by Jurisdiction, District 5 and County,
2012 and 2020

Jurisdiction	2012		2020		Numerical Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 5 - Portland	12,528	1,832	9,084	996	-3,444	-837
Cumberland County	30,315	4,995	23,726	3,162	-6,589	-1,832

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figures IV-21a through IV-21e show poverty rates for individuals and families in 2012 and 2020, as well as the percentage point change across those years. Poverty decreased among individuals and families in Cumberland County by three percentage points each (11% to 8% for individuals, 7% to 4% for families). Differences in the proportion of persons living in poverty range from a low of 5% (District 1) to a high of 12% (Portland). Differences in the proportion of families living in poverty range from a low of 3% (District 1) to a high of 6% (Portland).

The largest increases in individual poverty rates were found in Yarmouth (7%), as well as Casco (4%), North Yarmouth and Chebeague Island (3% each, respectively). Portland saw no change in its individual poverty rate but the family poverty rate has decreased by nearly 50%. The largest decreases in individual poverty rates were found in Long Island (11%), Harpswell (10%), Bridgton (9%), and Gray (8%).

The largest percentage point change in family poverty was also in Yarmouth—family poverty increased by 7 percentage points—a very large increase. Other jurisdictions that saw percentage point increases in family poverty include New Gloucester (3%), Freeport (2%), Gorham (2%), and Naples (1%). Jurisdictions that experienced major decreases in poverty include Long Island (10%), Harpswell (8%) Gray (7%), and Chebeague Island (6%).

Figure IV-21a.
Poverty Rates by Jurisdiction, District 1 and County, 2012 and 2020

Jurisdiction	2012		2020		Percent Point Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 1	5%	3%	5%	3%	-1%	0%
Baldwin	12%	10%	12%	6%	0%	-4%
Bridgton	15%	8%	6%	2%	-9%	-5%
Gorham	3%	1%	5%	3%	2%	2%
Scarborough	4%	2%	3%	1%	-1%	-1%
Sebago	9%	6%	9%	3%	1%	-2%
Standish	5%	4%	6%	4%	1%	0%
Cumberland County	11%	7%	8%	4%	-3%	-3%

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-21b.
Poverty Rates by Jurisdiction, District 2 and County, 2012 and 2020

Jurisdiction	2012		2020		Percent Point Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 2	10%	6%	7%	4%	-3%	-3%
Casco	14%	11%	17%	7%	4%	-4%
Falmouth	4%	2%	3%	2%	-2%	0%
Gray	12%	8%	5%	1%	-8%	-7%
Harrison	13%	7%	15%	7%	2%	-1%
Naples	15%	7%	12%	8%	-4%	1%
New Gloucester	7%	5%	9%	8%	2%	3%
Raymond	9%	5%	4%	1%	-5%	-4%
Windham	11%	7%	7%	3%	-4%	-4%
Cumberland County	11%	7%	8%	4%	-3%	-3%

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-21c.
Poverty Rates by Jurisdiction, District 3 and County, 2012 and 2020

Jurisdiction	2012		2020		Percent Point Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 3	8%	5%	7%	4%	-1%	-1%
Brunswick	11%	7%	9%	3%	-2%	-4%
Chebeague Island	10%	11%	13%	5%	3%	-6%
Cumberland	3%	2%	3%	2%	0%	0%
Freeport	6%	3%	4%	5%	-3%	2%
Harpwell	17%	12%	7%	4%	-10%	-8%
Long Island	13%	10%	3%	0%	-11%	-10%
North Yarmouth	3%	3%	6%	2%	3%	-1%
Pownal	9%	4%	3%	1%	-6%	-4%
Yarmouth	4%	2%	10%	9%	7%	7%
Cumberland County	11%	7%	8%	4%	-3%	-3%

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-21d.
Poverty Rates by Jurisdiction, District 4 and County, 2012 and 2020

Jurisdiction	2012		2020		Percent Point Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 4	11%	8%	8%	5%	-3%	-4%
Cape Elizabeth	3%	2%	3%	3%	0%	0%
South Portland	11%	8%	7%	4%	-4%	-5%
Westbrook	15%	12%	12%	8%	-3%	-5%
Cumberland County	11%	7%	8%	4%	-3%	-3%

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Figure IV-21e.
Poverty Rates by Jurisdiction, District 5 and County, 2012 and 2020

Jurisdiction	2012		2020		Percent Point Change	
	Individuals	Families	Individuals	Families	Individuals	Families
District 5 - Portland	12%	10%	12%	6%	0%	-4%
Cumberland County	11%	7%	8%	4%	-3%	-3%

Note: 2012 is the oldest 5-year estimate available.

Source: 2008-2012 and 2016-2020 American Community Survey 5-year estimates.

Poverty by family structure. There is wide variation in poverty rates by family structure. Married couples have the lowest poverty rates across districts, while single mothers with children living in the home have the highest poverty rates. In Cumberland County, single mothers are five times as likely to live in poverty as the average family household.

Portland (25%), along with Districts 3 and 4 (24% each, respectively), have the greatest proportion of single mothers experiencing poverty in the county. By jurisdiction, Chebeague Island (65%), Westbrook (54%), Yarmouth (49%), and Harrison (42%) have the highest proportion of single mothers experiencing poverty.

There are several jurisdictions in Cumberland County that have seen significant increases in the proportion of single mother households experiencing poverty. Compared to 2012, there are now six times as many single mother households experiencing poverty in Standish, as well as nearly four times as many in Yarmouth, more than twice as many in Cape Elizabeth and more than 1.5 times in Harrison and Falmouth in 2020.

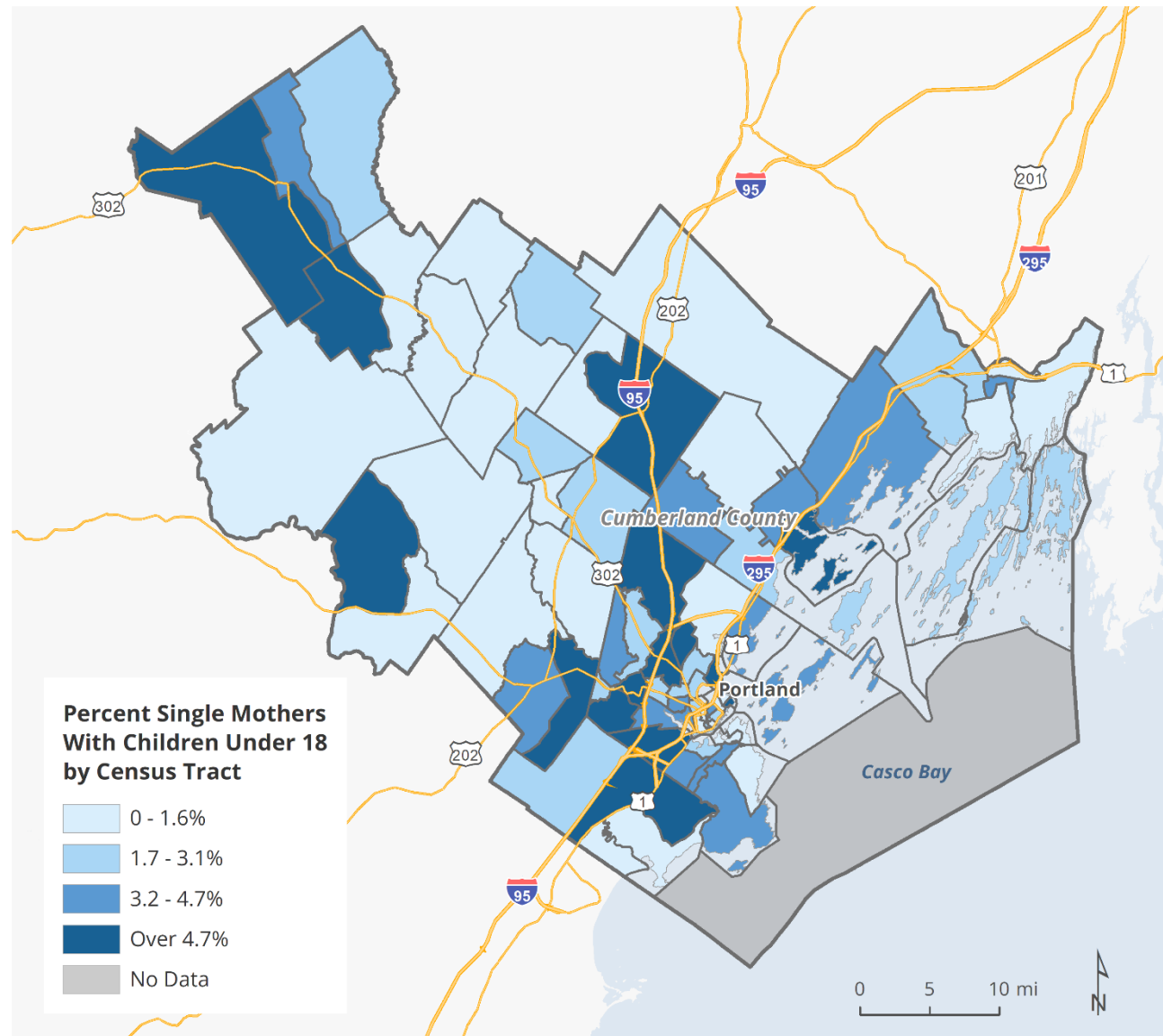
The challenges faced by single mothers—poverty, housing burden, difficulty finding appropriately-sized housing—have been exacerbated during the COVID-19 pandemic, given that service sectors like restaurants and tourism that employ a large share of women have seen some of the biggest job losses during the pandemic. This combined with disruptions in schools and day care centers make the current economic downturn unique for single mothers compared to previous economic recessions.

The map in Figure IV-22 shows the geographic distribution of single mother households across the county. The neighborhoods with the highest proportions of single mothers are closely aligned with concentrated poverty, as shown in subsequent maps.

**Figure IV-22.
Percent of Single Mothers with Children in Home by Census Tract, 2018**

Note:
Breaks represent 50%, 100%, and 150% of the county proportion single mothers with children in home residents (3.1%).

Source:
U.S. Census Bureau 2016-2020 American Community Survey 5-year estimates.



Poverty by race and ethnicity. As previously noted, poverty has decreased overall for families in Cumberland County. Hispanic families experienced the most dramatic decrease in poverty (24% in 2012, 6% in 2020) among all families by race/ethnicity. Non-Hispanic White families saw poverty decrease by half (6% in 2012, 3% in 2020) while both African American/Black (48% in 2012, 35% in 2020) and Asian (16% in 2012, 12% in 2020) households experienced poverty decreases by 25%.

However, poverty rates for families of color are much higher than poverty rates for non-Hispanic White families in Cumberland County. The poverty rate for African American/Black families is almost 12 times that of non-Hispanic White families in Cumberland County. Asian families are four times as likely to experience poverty as non-Hispanic White families, while Hispanic families are twice as likely.

The difference in poverty rates for African American/Black families is the most pronounced in Portland, where the poverty rate for African American/Black families is more than 11 times that of non-Hispanic White families. Additionally, African American/Black families are more than eight times as likely to experience poverty than non-Hispanic White families in Westbrook and more than three times as likely in South Portland.

For Latino/Hispanic families, the difference is most pronounced in Westbrook, where the poverty rate for Latino/Hispanic families is nearly four times that of non-Hispanic White families. In Falmouth, Asian families are five times as likely to experience poverty as non-Hispanic White family.

Poverty by age. County residents between the ages of 18-34 experience the highest rate of poverty (11%), followed by residents under 18 (9%). Residents between the ages of 35-64 and older than 65 have the lowest rate of poverty in the county (7%).

Similar to the county, residents under the age of 18 and between the ages of 18-34 have the highest rates of poverty in Portland (16% each, respectively), followed by residents over the age of 65 (13%) and those between the ages of 35-64 (12%).

Among jurisdictions in the county, residents between the ages of 18-34 experience the highest rates of poverty in Chebeague Island (76%), Baldwin (27%), Harrison (18%) and Brunswick (18%).

Residents under the age of 18 experience the highest rates of poverty in Westbrook (28%), Portland (16%), and Yarmouth (16%). Residents under the age of 35 still make up nearly half of all residents below the poverty line, which has implications for educational achievement and workforce growth.

Economic segregation. A critical aspect of expanding economic opportunity is addressing economic segregation. A growing body of research has consistently found that reducing economic segregation, especially for young children, has long-term, positive outcomes for families, and decreases the public sector costs of addressing the consequences of poverty.

Applying the concept of economic inequality to the county, this section examines how low income households are distributed across the county. This exercise compares the overall and low income distribution of households, families, and non-families (i.e., single persons living alone or with unrelated roommates). The far right column in Figures IV-23a through IV-23e shows the under- or over-representation of low income households by comparing the distribution of those households to the distribution of households in the county overall.

For low income households overall, Portland has a higher share than the city's overall proportion of the county's households would suggest (10 percentage points) — the only district with an over-representation of low income households in the county.

This difference is partially, although not entirely, related to the provision of affordable housing. A comparison of rental units priced at less than \$650/month (affordable to households with incomes of \$25,000 and less) showed modest differences in the share of affordable rentals compared to all rentals, with Bridgton, Brunswick, Portland, and mostly Westbrook providing a slightly higher share of affordable rentals than rental units overall. A similar analysis of owned homes found only modest variances in shares with only resort-oriented counties providing a lower share of affordable homes for purchase. In sum, the region is not significantly unbalanced, and differences are due both to where low wage jobs are located and where older residents living on fixed incomes are located, in addition to the location of affordable housing.

By District and jurisdiction:

- Districts 1 through 3 have a lower share of low income households than their respective proportion of households in the county would suggest. No jurisdiction in District 1 has an overrepresentation of low income households compared to their share of households in the county overall. Low income households are most underrepresented in Scarborough (7% of county households, 3% of county households making less than \$25,000).
- Overall, District 2 has a smaller proportion of low income households compared with its proportion of county households overall (20% of county households, 16% of county households making less than \$25,000). The only jurisdictions in District 2 with an overrepresentation of low income households are Casco, Harrison, and Naples.
- Similar to District 1, District 3 has no jurisdictions with an overrepresentation of low income households compared to their share of households in the county overall. Of

note, six of the nine jurisdictions in District 3 have a proportional share of low income households compared with their share of county households overall.

- Overall, District 4 has a proportional share of lower income households compared to its share of county households. Of the jurisdictions in District 4, Cape Elizabeth has an underrepresentation of low income households while Westbrook is overrepresented. South Portland has a proportional share of low income households.

Similar trends are exhibited for low income families and differences are the smallest for non-families.

Figure IV-23a.
Share of Very Low Incomes Households, Families, and Non-families by
Jurisdiction, District 1 and County, 2020

	Households				Difference in Share of County Households and <\$25,000
	All Households	% of (County) All Households	< \$25,000 Households	% of < \$25,000 Households	
District 1	21,890	18%	2,571	14%	-3%
Baldwin	540	0%	114	1%	0%
Bridgton	2,479	2%	605	3%	1%
Gorham	6,058	5%	618	3%	-1%
Scarborough	8,462	7%	575	3%	-4%
Sebago	800	1%	154	1%	0%
Standish	3,551	3%	504	3%	0%
Cumberland County	123,384	100%	17,891	15%	
	Families				Difference in Share of County Households and <\$25,000
	All Families	% of (County) All Family Households	< \$25,000 Families	% of < \$25,000 Families	
District 1	15,298	21%	689	16%	-5%
Baldwin	366	0%	34	1%	0%
Bridgton	1,517	2%	130	3%	1%
Gorham	4,319	6%	173	4%	-2%
Scarborough	6,022	8%	102	2%	-6%
Sebago	484	1%	22	0%	0%
Standish	2,590	4%	228	5%	2%
Cumberland County	73,543	100%	4,413	6%	
	Non-families				Difference in Share of County Households and <\$25,000
	All Non- families	% of (County) All Non-families	< \$25,000 Non- families	% of < \$25,000 Non-families	
District 1	6,592	13%	1,889	14%	0%
Baldwin	174	0%	80	1%	0%
Bridgton	962	2%	476	3%	1%
Gorham	1,739	3%	449	3%	0%
Scarborough	2,440	5%	473	3%	-2%
Sebago	316	1%	134	1%	0%
Standish	961	2%	277	2%	0%
Cumberland County	49,841	100%	13,955	28%	

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-23b.

Share of Very Low Income Households, Families, and Non-families by Jurisdiction, District 2 and County, 2020

	Households				Difference in Share of County Households and <\$25,000
	All Households	% of (County) All Households	< \$25,000 Households	% of < \$25,000 Households	
District 2	24,656	20%	2,947	16%	-4%
Casco	1,913	2%	616	3%	2%
Falmouth	4,786	4%	316	2%	-2%
Gray	3,657	3%	234	1%	-2%
Harrison	1,401	1%	429	2%	1%
Naples	1,961	2%	441	2%	1%
New Gloucester	2,041	2%	196	1%	-1%
Raymond	1,908	2%	114	1%	-1%
Windham	6,989	6%	601	3%	-2%
Cumberland County	123,384	100%	17,891	15%	
	Families				Difference in Share of County Households and <\$25,000
	All Families	% of (County) All Family Households	< \$25,000 Families	% of < \$25,000 Families	
District 2	16,584	23%	779	18%	-5%
Casco	920	1%	64	1%	0%
Falmouth	3,522	5%	81	2%	-3%
Gray	2,456	3%	29	1%	-3%
Harrison	717	1%	70	2%	1%
Naples	1,061	1%	120	3%	1%
New Gloucester	1,545	2%	94	2%	0%
Raymond	1,437	2%	30	1%	-1%
Windham	4,926	7%	291	7%	0%
Cumberland County	73,543	100%	4,413	6%	
	Non-families				Difference in Share of County Households and <\$25,000
	All Non-families	% of (County) All Non-families	< \$25,000 Non-families	% of < \$25,000 Non-families	
District 2	8,072	16%	2,275	16%	0%
Casco	993	2%	551	4%	2%
Falmouth	1,264	3%	264	2%	-1%
Gray	1,201	2%	203	1%	-1%
Harrison	684	1%	364	3%	1%
Naples	900	2%	321	2%	0%
New Gloucester	496	1%	102	1%	0%
Raymond	471	1%	94	1%	0%
Windham	2,063	4%	375	3%	-1%
Cumberland County	49,841	100%	13,955	28%	

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-23c.
Share of Very Low Income Households, Families, and Non-families by
Jurisdiction, District 3 and County, 2020

Households					
	All Households	% of (County) All Households	< \$25,000 Households	% of < \$25,000 Households	Difference in Share of County Households and <\$25,000
District 3	22,641	18%	2,658	15%	-3%
Brunswick	8,295	7%	1,269	7%	0%
Chebeague Island	276	0%	80	0%	0%
Cumberland	2,920	2%	207	1%	-1%
Freeport	3,415	3%	335	2%	-1%
Harpswell	2,382	2%	312	2%	0%
Long Island	117	0%	20	0%	0%
North Yarmouth	1,427	1%	141	1%	0%
Pownal	562	0%	27	0%	0%
Yarmouth	3,247	3%	266	1%	-1%
Cumberland County	123,384	100%	17,891	15%	
Families					
	All Families	% of (County) All Family Households	< \$25,000 Families	% of < \$25,000 Families	Difference in Share of County Households and <\$25,000
District 3	15,087	21%	703	16%	-5%
Brunswick	4,738	6%	190	4%	-2%
Chebeague Island	141	0%	13	0%	0%
Cumberland	2,262	3%	48	1%	-2%
Freeport	2,674	4%	144	3%	0%
Harpswell	1,526	2%	64	1%	-1%
Long Island	71	0%	0	0%	0%
North Yarmouth	1,009	1%	13	0%	-1%
Pownal	444	1%	7	0%	0%
Yarmouth	2,222	3%	224	5%	2%
Cumberland County	73,543	100%	4,413	6%	
Non-families					
	All Non-families	% of (County) All Non-families	< \$25,000 Non-families	% of < \$25,000 Non-families	Difference in Share of County Households and <\$25,000
District 3	7,554	15%	2,230	16%	1%
Brunswick	3,557	7%	1,145	8%	1%
Chebeague Island	135	0%	67	0%	0%
Cumberland	658	1%	160	1%	0%
Freeport	741	1%	207	1%	0%
Harpswell	856	2%	247	2%	0%
Long Island	46	0%	20	0%	0%
North Yarmouth	418	1%	128	1%	0%
Pownal	118	0%	23	0%	0%
Yarmouth	1,025	2%	232	2%	0%
Cumberland County	49,841	100%	13,955	28%	

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-23d.
Share of Very Low Income Households, Families, and Non-families by
Jurisdiction, District 4 and County, 2020

	Households				Difference in Share of County Households and <\$25,000
	All Households	% of (County) All Households	< \$25,000 Households	% of < \$25,000 Households	
District 4	23,382	19%	3,469	19%	0%
Cape Elizabeth	3,754	3%	248	1%	-2%
South Portland	11,242	9%	1,653	9%	0%
Westbrook	8,386	7%	1,568	9%	2%
Cumberland County	123,384	100%	17,891	15%	
	Families				Difference in Share of County Households and <\$25,000
	All Families	% of (County) All Family Households	< \$25,000 Families	% of < \$25,000 Families	
District 4	13,462	18%	989	22%	4%
Cape Elizabeth	2,679	4%	91	2%	-2%
South Portland	6,167	8%	358	8%	0%
Westbrook	4,616	6%	540	12%	6%
Cumberland County	73,543	100%	4,413	6%	
	Non-families				Difference in Share of County Households and <\$25,000
	All Non- families	% of (County) All Non-families	< \$25,000 Non- families	% of < \$25,000 Non-families	
District 4	9,920	20%	2,486	18%	-2%
Cape Elizabeth	1,075	2%	156	1%	-1%
South Portland	5,075	10%	1,304	9%	-1%
Westbrook	3,770	8%	1,025	7%	0%
Cumberland County	49,841	100%	13,955	28%	

Source: 2016-2020 American Community Survey 5-year estimates.

Figure IV-23e.

Share of Very Low Income Households, Families, and Non-families by Jurisdiction, District 5 and County, 2020

	Households				Difference in Share of County Households and <\$25,000
	All Households	% of (County) All Households	< \$25,000 Households	% of < \$25,000 Households	
District 5 - Portland	30,796	25%	6,252	35%	10%
Cumberland County	123,384	100%	17,891	15%	
	Families				Difference in Share of County Households and <\$25,000
	All Families	% of (County) All Family Households	< \$25,000 Families	% of < \$25,000 Families	
District 5 - Portland	13,099	18%	1,258	28%	11%
Cumberland County	73,543	100%	4,413	6%	
	Non-families				Difference in Share of County Households and <\$25,000
	All Non-families	% of (County) All Non-families	< \$25,000 Non-families	% of < \$25,000 Non-families	
District 5 - Portland	17,697	36%	5,132	37%	1%
Cumberland County	49,841	100%	13,955	28%	

Source: 2016-2020 American Community Survey 5-year estimates.

The maps in the following figures show how poverty—roughly equivalent to the “<\$25,000” households captured in the table above—is distributed in the county. The maps are shown for individuals and families, with little variation between the two.

In line with data in the previous table, concentrations of poverty are located throughout Cumberland County, located in Portland, Westbrook, Brunswick, Yarmouth, Casco, Naples, and Standish.

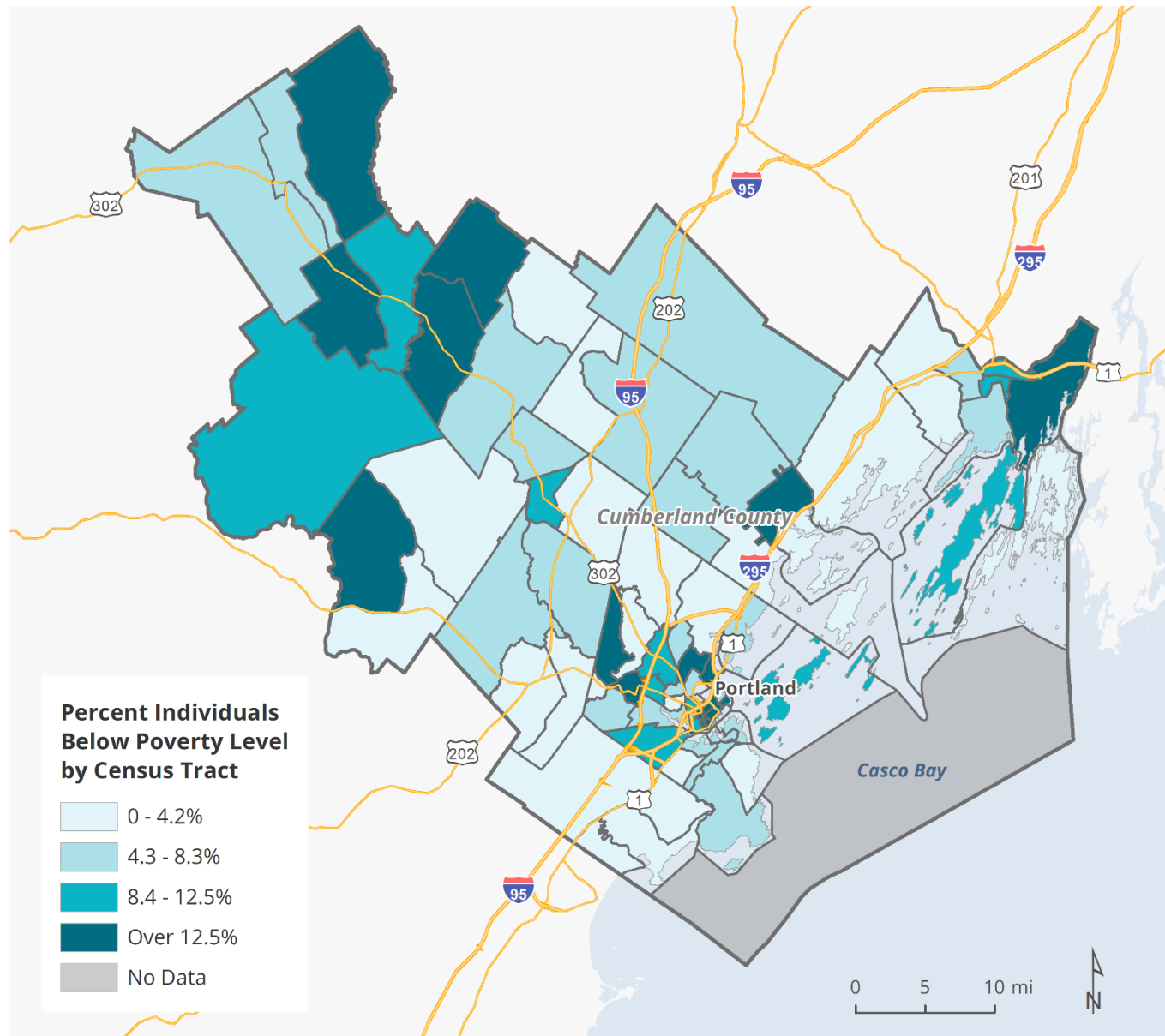
In Cumberland County, there were five census tracts with individual poverty rates at least three times that of the county rate. Overall, these census tracts are much more diverse, younger, and more likely to be unemployed than the county overall. Each of the five census tracts have a higher proportion of African American/Black residents compared to the county. Two of the census tracts also have a greater proportion of single mother households.

There were seven census tracts with family poverty rates at least three times that of the county rate. Collectively, these census tracts are more diverse and younger than the county overall. A majority of the census tracts have a greater proportion of single mother households.

**Figure IV-24.
Individual Poverty
Rate by Census
Tract, 2020**

Note:
Breaks represent 50%, 100%, and
150% of the county proportion of
individuals below the poverty rate
(8.3%).

Source:
2016-2020 American Community
Survey 5-year estimates.



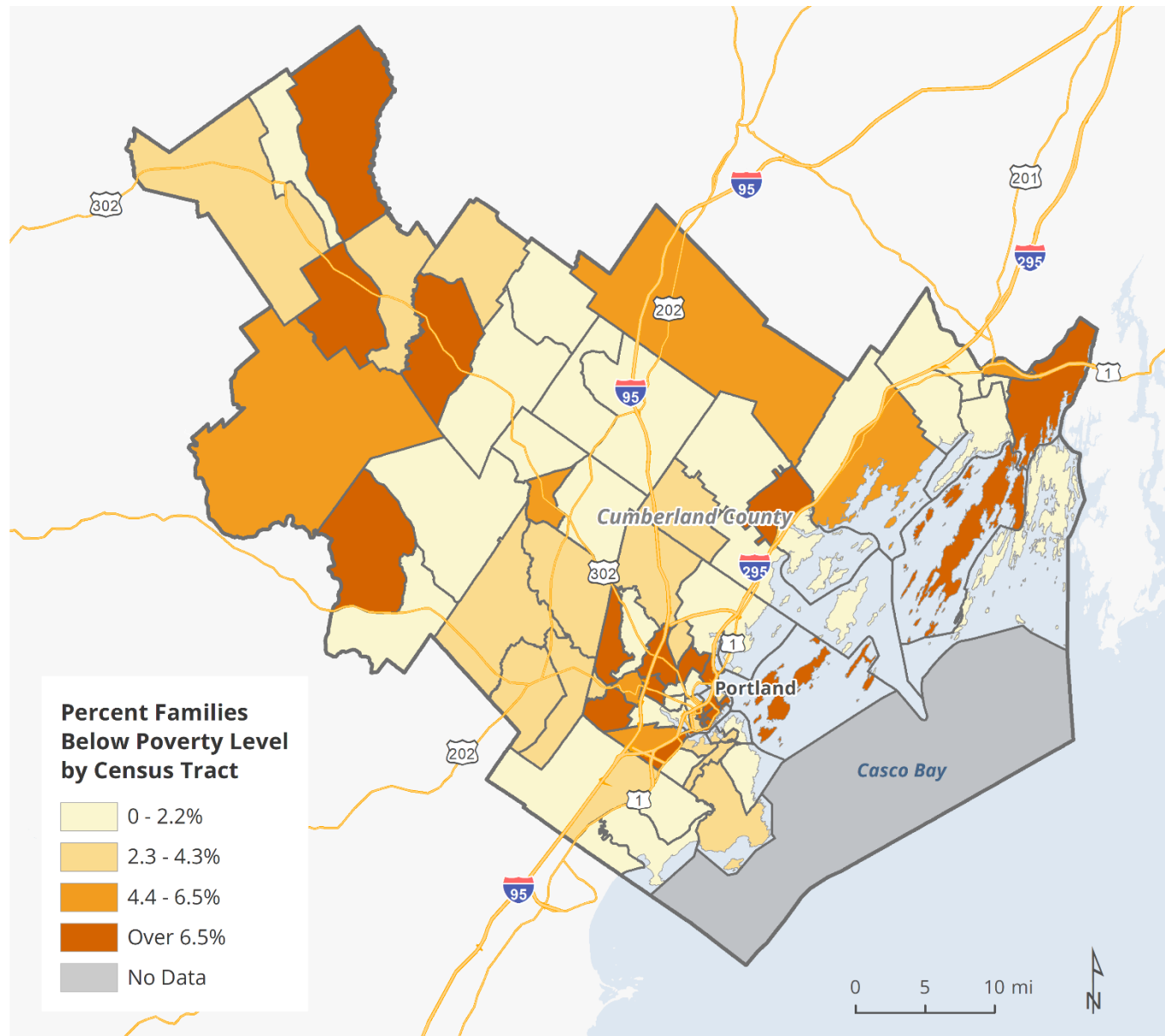
**Figure IV-25.
Family Poverty Rate
by Census Tract,
2020**

Note:

Breaks represent 50%, 100%, and 150% of the county proportion of families below the poverty rate (4.3%).

Source:

2016-2020 American Community Survey 5-year estimates.



SECTION V.

ACCESS TO OPPORTUNITY

SECTION V.

Access to Opportunity

The Access to Opportunity section examines the many factors that determine the economic health of Cumberland County's communities and neighborhoods. Access to economic opportunity is measured through **equitable access to community assets** including:

- Employment opportunities and outcomes;
- Access to quality educational environments, which promise economic growth for future workforce;
- Access to employment readiness programs and job training; and
- Access to work enabling services including broadband, childcare, and transportation.

In reading this analysis, it is important to note that access to opportunity is multi-faceted, complex, and requires a collective and concerted effort to facilitate change. This section provides base data and trends to inform future efforts to improve access to opportunity—and to support Cumberland County's economic growth in a way that benefits those who need it the most.

Geographic area of analysis. This section departs from the district-level analysis used in prior sections. It instead focuses on typical employment market boundaries, as defined by labor market data and commute patterns. Geographic areas referenced in this section include Cumberland County overall, the City of Portland, and "Greater Portland"—which includes the cities of Portland, South Portland, and Westbrook.

Primary Findings

- **Median wages were slightly higher in Cumberland County than in the state overall.** Median annual wages in the county in 2020 were \$45,005—nearly \$5,000 more than the state's median annual wages (\$40,460) (Figure V-1).
- **Nearly 6 in 10 heads of household who work in lower wage jobs—**entertainment, recreation, accommodation, food service, agriculture, forestry, fishing, hunting, or mining—in Greater Portland **earn wages that are not high enough to cover housing costs.** Workers in these industries are housing cost burdened (Figure V-2).
- Cumberland County had one of the lowest unemployment rates (5.3%) in the state during 2020 (Figure V-4). **The unemployment rate among Native Americans (15.4%) was disproportionately high while African American/Black**

residents had the lowest rate (1.4%) (Figure V-5). Except for Native Americans, Cumberland County workers had higher labor force participation rates than the state across racial and ethnic groups. (Figure V-9).

- **Residents experiencing disabilities had higher rates of unemployment in both Portland and Cumberland County** (Figure V-6), and participated in the labor force at a much lower rate (43% and 49%, respectively) than the overall working-age population (71% and 69%, respectively) (Figure V-10). However, the gap between the unemployment rate of people experiencing disabilities and the overall workforce was smaller in both the city and county than the state (3.9 and 5.7 percentage point gap in the city and county, 6.6 percentage point gap in the state).
- **Cumberland County residents are more likely than peer counties and the state to have access to a computer and broadband internet** (Figures V-20 and V-21). However, there are inequities in access among households by income: 41% of Cumberland County households making less than \$20,000 do not have a broadband internet subscription. Compared to Cumberland County, Portland residents have slightly less access to a computer and broadband internet — 7.8% of residents do not have access to a computer and 12.6% do not have broadband internet.
- **Economically disadvantaged students make up more than half of school enrollment** in the Westbrook School District, Harpswell Coastal Academy, RSU 17 (serving Harrison), and RSU 61 (serving Bridgton and Naples). These school districts also experienced some of the lowest rates of student testing success among all county school districts (Figures V-15 and V-17)—suggesting that these districts need more support to address the needs of economically disadvantaged students.
- Educational attainment matters for earnings potential: **County residents with a bachelor’s degree earn 56% more than those with a high school diploma**, while Portland residents with a bachelor’s degree earn 48% more than their counterparts with a high school diploma. The gap is wider in Cumberland County than in other parts of Maine (Figure V-27).
- **The ability to attain homeownership increases with educational attainment:** 52% of county residents with a high school diploma own their home, compared to 76% for those with a college degree (Figure V-29). The numbers are much lower in Portland — 36% of city residents with a high school diploma own their home while 54% with a college degree are homeowners. Compared to the state, it is more difficult for city and county households with lower levels of educational attainment to become homeowners.
- Cumberland County’s childcare infrastructure is robust compared to the state. However, there are childcare deserts found in Portland, South Portland, Westbrook, Bridgton, and Brunswick (Figure V-23). Statewide, **Hispanic and low income**

families, as well as family living in rural areas, are more likely to live in areas with limited childcare options.

Cumberland County's Economy at a Glance

The Access to Economic Opportunity analysis begins with an overview of employment conditions in Cumberland County, which drive wages and ability to afford housing.

Primary industries and wages. A large share of Maine's jobs are located in Cumberland County: There were 175,110 total workers in Cumberland County, making up a third of Maine's total jobs of 575,220.

Cumberland County holds large shares of the state's higher paying jobs. For instance, 57% of the state's computer and mathematical occupations; legal occupations (49%); and business and financial operations occupations (43%) are located in the county. This is also true of arts and entertainment occupations (43%).

Disparities by industry. However, the industries with the most jobs in Cumberland County are mostly lower paying. Primary employment industries include office support (14%) and sales (10%), followed by an equal distribution of jobs in management (7%), business/finance (7%), healthcare practitioners (7%), food preparation and serving (7%), and transportation/moving (7%).

Median wages were slightly higher in Cumberland County than in the state overall. Median annual wages in Cumberland County in 2020 were \$45,005—nearly \$5,000 more than the state's median annual wages (\$40,460).

There is a large difference in median wages by job type in the county, leading to a challenging job market for low wage earners—who hold the most common jobs in the county. Median wages were highest in Cumberland County for those working in management (\$103,339), followed by those working as architects and engineers (\$84,027), computer and mathematics workers (\$80,062), and healthcare practitioners (\$71,130). Median wages were lowest for those working in food preparation and serving (\$28,635), personal care (\$30,944), healthcare support (\$31,808), cleaning and maintenance (\$32,562), and sales (\$34,460).

Figure V-1.
Employment and Annual Wages, Cumberland County, 2020

	Estimated Employment	Median Wages
All Occupations	175,110	\$45,005
Office and Administrative Support	24,120	\$39,824
Sales and Related	16,970	\$34,460
Food Preparation and Serving	12,960	\$28,635
Management	12,480	\$103,339
Transportation and Moving	12,150	\$35,770
Business and Financial Operations	11,900	\$66,268
Healthcare Practitioners	11,750	\$71,130
Educational and Library	10,450	\$51,453
Healthcare Support	9,460	\$31,808
Production	7,310	\$37,892
Computer and Mathematical	6,860	\$80,062
Construction and Extraction	6,190	\$47,837
Maintenance and Repair	6,160	\$48,754
Cleaning and Maintenance	5,930	\$32,562
Personal Care and Service	3,970	\$30,944
Protective Service	3,640	\$43,816
Community and Social Service	3,430	\$49,089
Arts, Design, and Entertainment	3,080	\$48,348
Architecture and Engineering	2,870	\$84,027
Legal	1,850	\$62,967
Life, Physical, and Social Science	1,450	\$66,258
Farming, Fishing, and Forestry	140	\$38,544

Source: Maine Department of Labor Center for Workforce Research & Information and Root Policy Research.

Low wages in several sectors means that housing costs are difficult to cover. The housing market typically responds to the highest wage earners, burdening low wage workers who, in low vacancy markets, have few choices but to absorb increased costs.

Housing cost burden by industry. As shown in Figure V-2, many Greater Portland (namely, Portland, South Portland, and Westbrook) households working in low-wage industries experience cost burden at higher rates than those working in high-income

industries. In fact, 58% of Greater Portland households in which the head works in entertainment, recreation, accommodation, or food service are cost burdened (meaning they spend more than 30% of their household income on housing costs). Similarly, 58% of households whose head works in agriculture, forestry, fishing, hunting, or mining are cost burdened.

Households in which the head works in utilities/transportation, information, or finance/insurance/real estate have the lowest rates of cost burden: less than 25% of such households pay more than 30% of their income in housing costs.

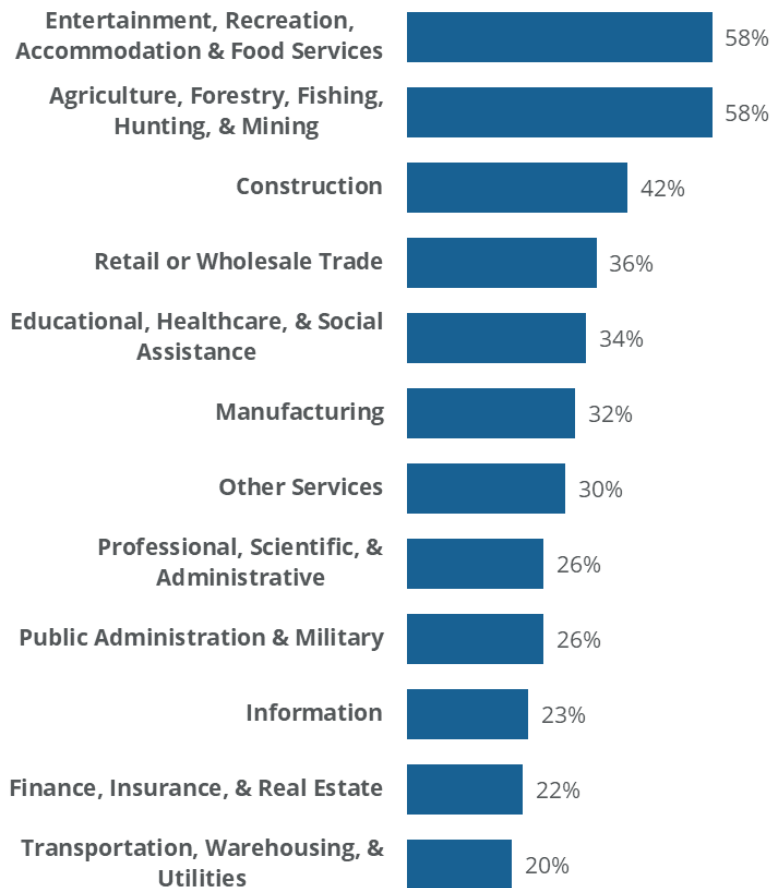
**Figure V-2.
Cost Burden by
Employment
Industry, Greater
Portland, 2019**

Note:

Households are considered cost burdened if their gross rent or total monthly ownership costs are greater than 30% of their household income. Households' industry is determined by the industry of the household head. Unemployed household heads or those out of the labor force are excluded from the data. "Other Services" include automotive repair and maintenance, personal and household goods repair and maintenance, barber shops, beauty salons, laundry services, religious organizations, etc.

Source:

2019 5-year IPUMS data and Root Policy Research.

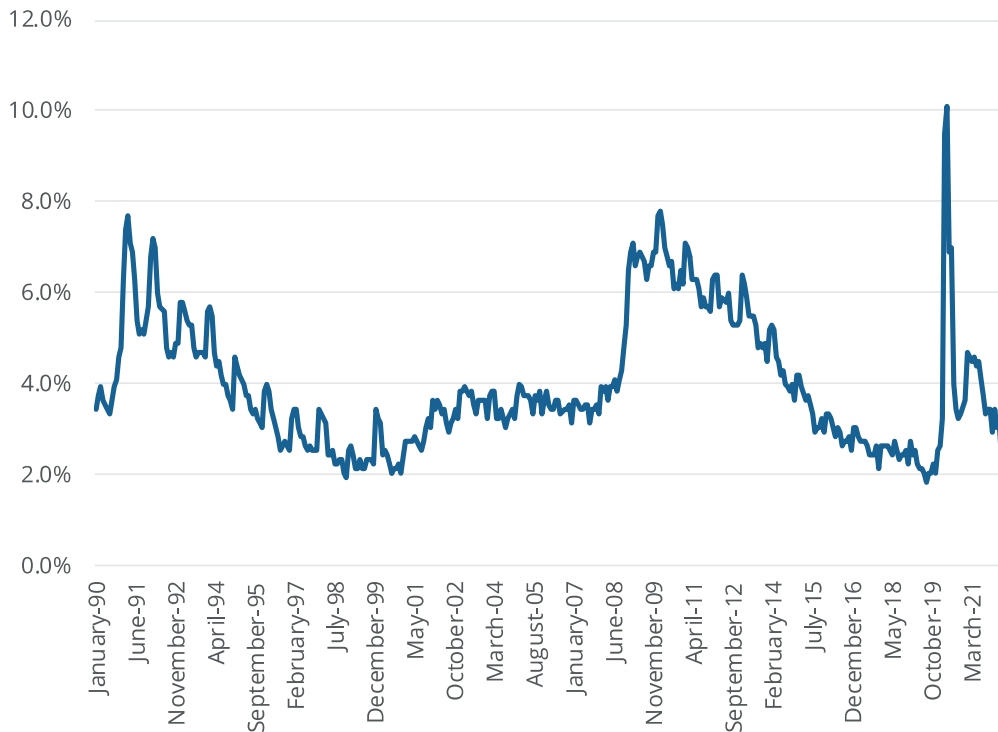


High rates of cost burden are costly not only for those experiencing them, but for the state's economy as a whole. Estimates using survey-weighted 2019 IPUMS data indicate that had cost burdened households in Greater Portland been able to spend just 30% of their incomes in housing costs, this would have freed up an aggregate of about \$9,980,090 per month (or \$119,761,080 per year). This money could have otherwise been saved, spent, and invested within Greater Portland communities.

Unemployment. Cumberland County's unemployment rate as of May 2022 was a very low 2.5%. This is lower than the state's unemployment rate of 3.2% and the national

unemployment rate of 3.6%. As shown in Figure V-3, after spiking in May 2020 at the height of the pandemic, the rate returned to near pre-pandemic levels within a year. The employment recovery following the pandemic was much more swift than that following the Great Recession, where employment peaked at around 8% and was followed by a 5 year recovery period.

Figure V-3.
Unemployment Rate, Cumberland County, January 1990 to May 2022

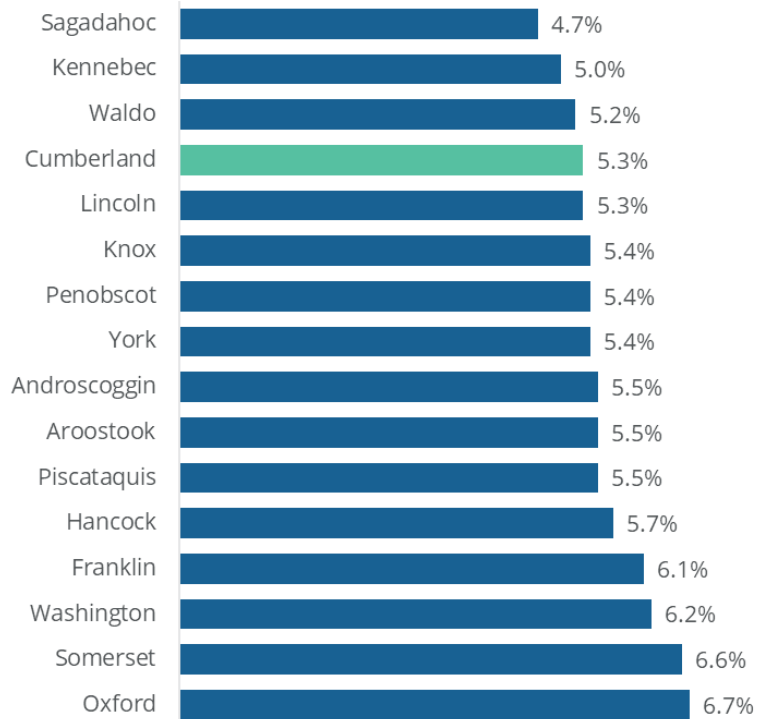


Note: These data are not seasonally adjusted.
 Source: Bureau of Labor Statistics and Root Policy Research.

According to the Maine Department of Labor, Cumberland County had one of the lowest unemployment rates in the state during 2020 (Figure V-4). Cumberland’s 2020 annual average unemployment rate was 5.3%, while neighboring Oxford County had the highest unemployment rate in the state at 6.7%. Cumberland also had lower unemployment rates than neighboring York (5.4%) and Androscoggin counties (5.5%). Sagadahoc County had the lowest unemployment rate at 4.7%.

**Figure V-4.
Average Annual
Unemployment
Rate, Maine
Counties, 2020**

Source:
Maine Department of Labor
Center for Workforce Research &
Information and Root Policy
Research.



Racial disparities. According to 2020 ACS data, the unemployment rate among Native Americans was higher than any other racial or ethnic group in Cumberland County. The unemployment rate among Native Americans in Cumberland County (15.4%) was substantially higher than the unemployment rate among Native Americans statewide (9.0%). Compared to 2019 ACS data, the unemployment rate for Native Americans increased by more than nine percentage points for this population in just over a year—highlighting the disproportionate impact of the pandemic on this population group.

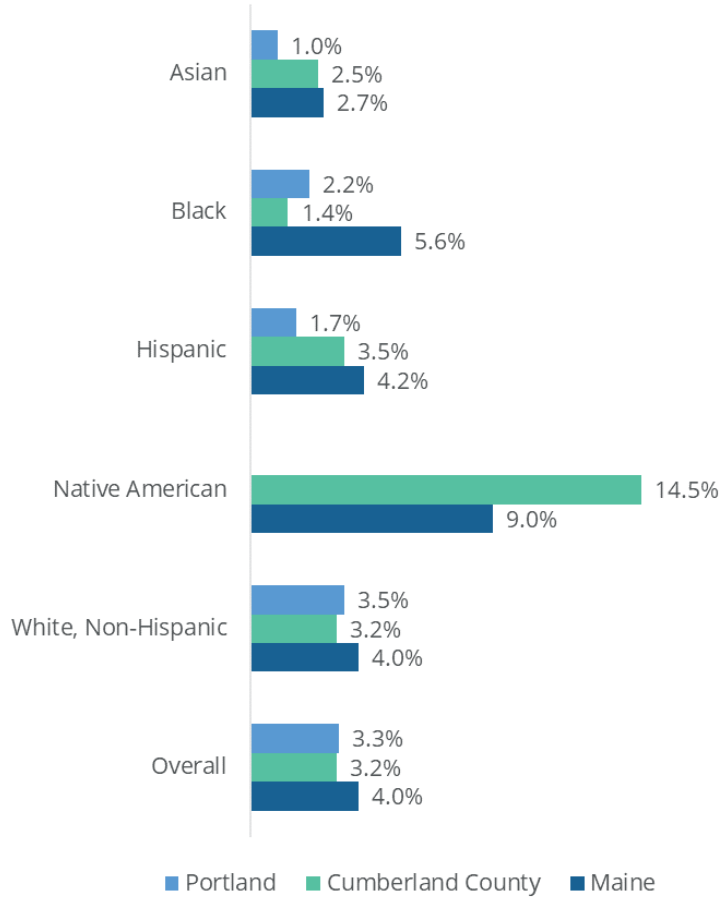
For all other races and ethnicities, unemployment is very low and is lower in Cumberland County than in the state overall.

African American/Black residents in Cumberland County had the lowest unemployment rate in 2020, at just 1.4%. This is also substantially lower than the statewide average unemployment rate among African American/Black workers, which was 6%.

The unemployment rates among different racial and ethnic groups in Portland were also relatively low compared to the state. Non-Hispanic White residents had the highest unemployment rate in the city (3.5%), while Asian residents had the lowest (1%). The unemployment rate for Native Americans at the city level was not calculated due to the small sample size.

**Figure V-5.
Unemployment
rate, by Race and
Ethnicity,
Portland,
Cumberland
County and Maine,
2020**

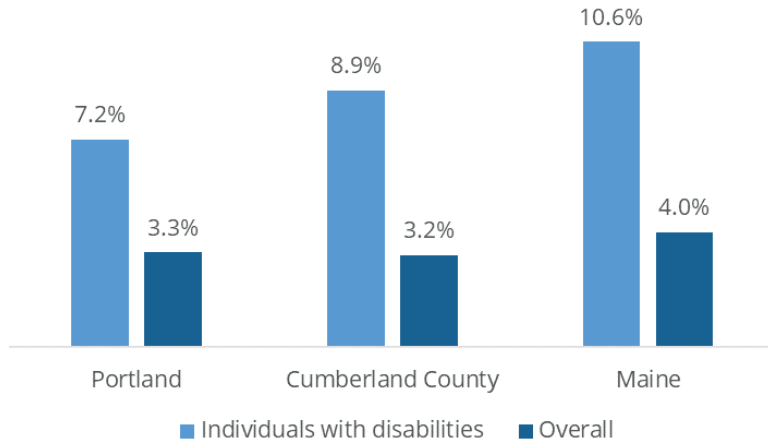
Source:
5-year 2020 ACS estimates and
Root Policy Research.



Disparities by disability. Residents experiencing disabilities in Portland, Cumberland County, and Maine had higher unemployment rates than the overall population. However, the gaps in both the city and county were narrower than the state. In Cumberland County in 2020, 8.9% of people with disabilities were unemployed compared to 3.2% of workers overall—a difference of 5.7 percentage points. Portland’s gap was even smaller at 3.9 percentage points — with 7.2% of people experiencing disabilities unemployed compared to 3.3% overall. This is smaller than the statewide gap of 6.6 percentage points.

Figure V-6.
Unemployment
rate, by Disability
Status, Portland,
Cumberland
County, and
Maine, 2020

Source:
 5-year 2020 ACS estimates and
 Root Policy Research.



Labor force participation. Another measure of workforce conditions is labor force participation. Labor force participation rates measure the percent of individuals over age 15 who are either employed *or are actively looking for employment*.

A high labor force participation rate coupled with a high unemployment rate—as seen for Native Americans in Cumberland County—is indicative of a lack of available jobs for the skill set of job seekers.

Labor force participation rates in Portland were higher than both the county and the state, seeing a strong increase between 2015 and 2018. Since peaking in 2018 at 72.2%, the labor force participation rate has slightly declined. Labor force participation rates have been declining steadily over time in Maine and nationwide, but Cumberland County’s labor force participation rate has remained relatively steady since 2010.

Figure V-7.
Labor Force
Participation
Rates, Portland,
Cumberland
County, and
Maine, 2010 to
2020

Source:
 5-year ACS estimates and Root
 Policy Research.

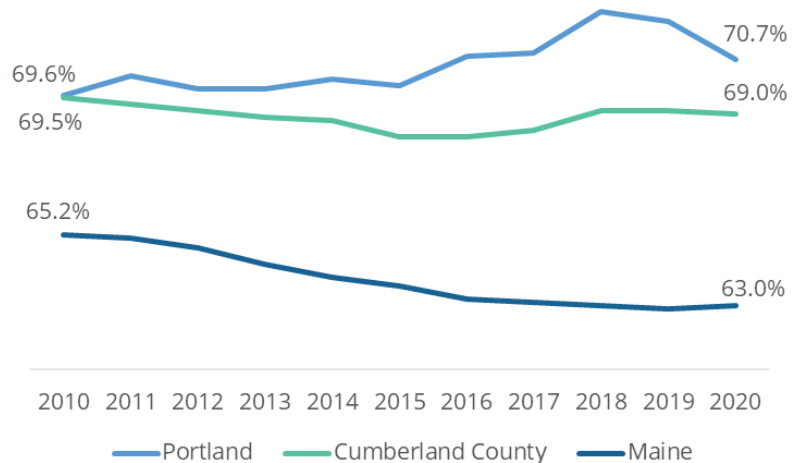
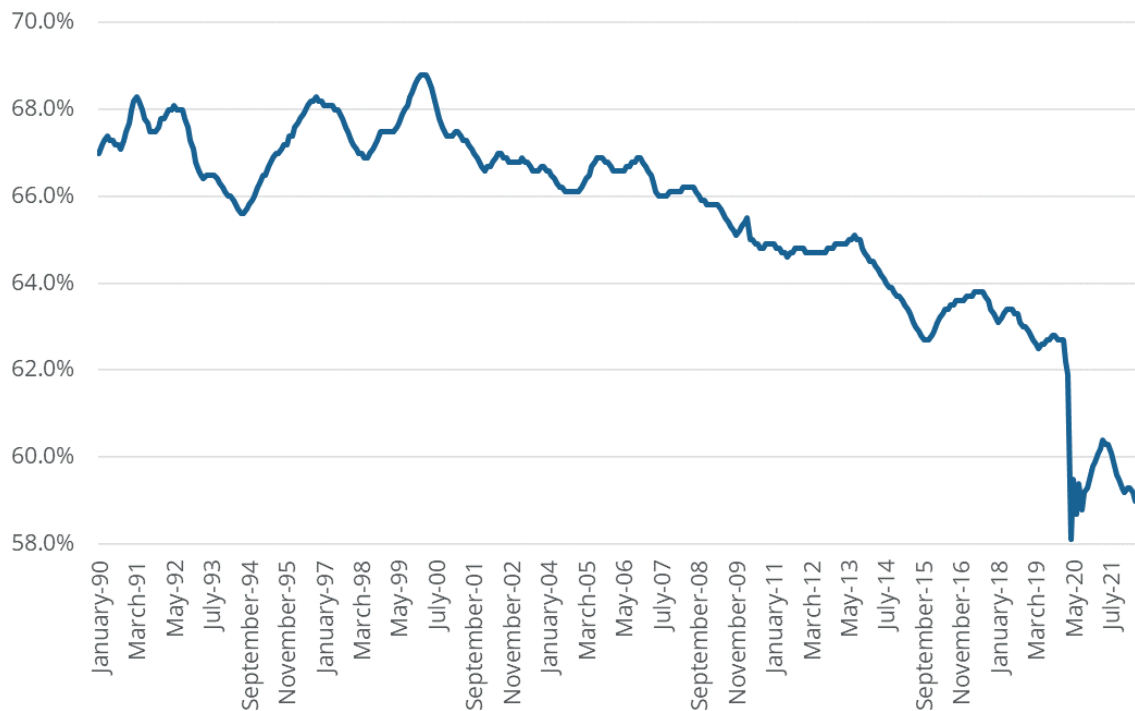


Figure V-8 shows labor force participation by month for the state overall, highlighting the effect on the pandemic. Statewide labor force participation rates hit their lowest level in April 2020 at 58.6%, only slightly recovering to 59.0% by May 2022.

Figure V-8.
Labor Force Participation Rate, Maine, January 1990 to May 2022



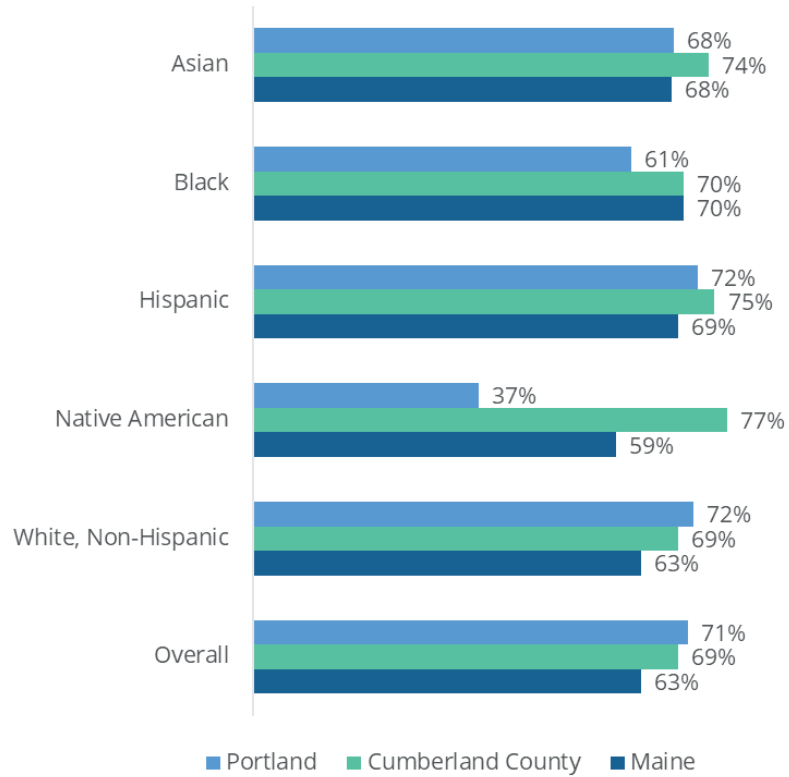
Note: These data are not seasonally adjusted.
 Source: Bureau of Labor Statistics and Root Policy Research.

Racial and gender disparities. Labor force participation rates are higher among some racial and ethnic populations and differ by gender. In Cumberland County, Native Americans African American/Black, Hispanic, and Asian workers have the highest labor force participation rate, while non-Hispanic White residents have the lowest. The opposite holds true in Portland, where non-Hispanic White and Hispanic residents have the highest labor force participate rate. Native Americans in Portland have the lowest rate among different racial and ethnic populations.

Overall, Maine’s labor force participation rate is 63%. African American/Black Mainers have the highest labor force participation rate (70%), while Native Americans have the lowest (59%).

Figure V-9.
Labor force
Participation Rate,
by Race and
Ethnicity,
Portland,
Cumberland
County and Maine,
2020

Source:
 5-year ACS estimates and Root
 Policy Research.

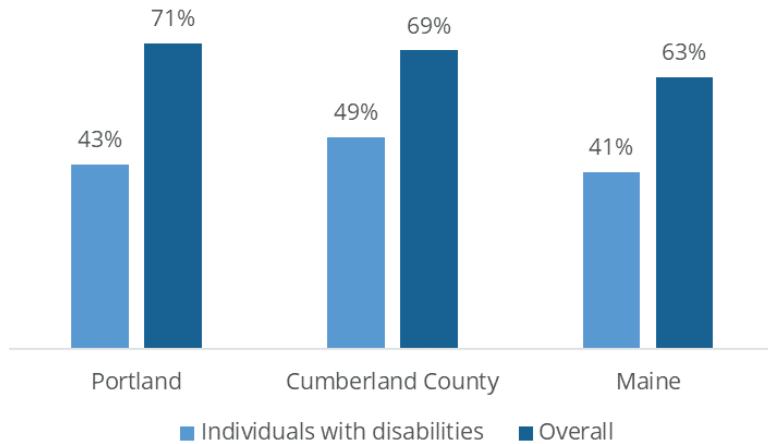


Disparities by disability. As shown in Figure V-10, 49% of working-age people with disabilities were employed or looking for a job compared to 69% of the working-age population overall in Cumberland County. The gap among residents in the workforce with and without disabilities is larger in Portland (43% with disabilities, 71% overall. Maine shows similar differences to the county.

These differences in labor force participation rates largely have to do with access to the labor market, including via housing and transportation. Some people with disabilities and low income workers who are out of the labor force might otherwise be in the labor force if accessible and reliable transportation and housing were easier to obtain.¹

¹ Lubin, Andrea, and Devajyoti Deka. "Role of public transportation as job access mode: Lessons from survey of people with disabilities in New Jersey." *Transportation research record* 2277.1 (2012): 90-97.

Figure V-10.
Labor force
Participation Rate,
by Disability
Status,
Cumberland
County and Maine,
2020



Source:
 5-year 2020 ACS estimates and
 Root Policy Research.

Employment challenges. During the focus groups conducted for this study, several stakeholders spoke to the link between the lack of affordable housing and the impact on employment. One stakeholder commented that it was unfortunate that public, private, and nonprofit sectors haven't come together to address housing issues in the state because it's also impacting the workforce. This stakeholder emphasized that the "State [of Maine] needs workforce." Another stakeholder offered: "we do not have a challenge with unemployment, we have a shortage of labor." One stakeholder noted that the State's economic development plan wants to add at least 75,000 workers over the next 10 years. They added that because the population is aging and the death rate is higher than the birth rate, the State won't be able to reach this mark without immigration.

Several stakeholders noted that employment patterns have changed significantly over the past two years, namely the ability to work from home. Expanded access to internet and the availability to work remotely has made some of the more rural areas in Cumberland County more appealing to out-of-state workers, which has led to an increase in domestic in-migration. A couple of stakeholders felt this has led to an increased demand for workforce housing in their towns. Participants noted the expansion of the Roux Institute in Portland will further increase demand for housing in the area.

Stakeholders from a couple of towns outside of Portland noted that their lack of rental housing stock is limiting housing options for the segment of workforce with lower incomes, particularly new Mainers. One stakeholder said that "much of the rental stock in these communities is comprised of smaller attached homes that are currently taken up by higher income renters waiting to buy larger single-family homes."

One stakeholder felt that while there are employment opportunities available, people are having trouble finding quality jobs. Several stakeholders spoke to the skills mismatch between the asylum-seeking, refugee population and employment opportunities, adding that many of these people have many more skills (e.g., doctor, nurse) than the jobs that are

available to them (e.g., lower-wage tourism jobs). Even though they have credentials in their native country, they're not able to practice their profession in the United States. They added that immigrant populations are trying to remain stable and cannot plan for careers. Other stakeholders noted that businesses are now starting to look at immigrants to fill higher-skilled positions, noting that technical assistance and career training would be beneficial for new Mainers to take advantage of the labor market.

This stakeholder also spoke to the poor conditions faced by undocumented workers. They noted that not only have they been working in Maine for a long time under bad conditions, but during COVID, were primarily in jobs (e.g., seafood processing) where they had to keep showing up in person. One stakeholder estimated that around 40% of school-aged Hispanic children were chronically absent from school due to worker shortages they were filling. Another stakeholder articulated that people experiencing disabilities are often working lower paying jobs and are on the lower end of the socioeconomic scale.

The resident survey asked respondents to articulate what they would need most to improve their employment situation. The overwhelming response from respondents was **an increase in wages**. Respondents most likely to articulate this need include:

- Single parents, 60%
- Asian, 56%
- Brunswick, 56%
- Renters, 54%
- Households making between \$25,000-\$49,999, 51%
- Households making between \$50,000-\$99,999, 47%
- Hispanic, 47%

Education and Employment Readiness

This section examines disparities in two areas that are critical for successful employment in the majority of jobs: K-12 education quality and education beyond high school, including community college and job training programs. It focuses on the disparities in outcomes among protected classes in each.

Publicly supported education. Publicly supported education and training are key building blocks for a well-functioning economy. A population that is better educated has less unemployment, reduced dependence on public assistance programs, and generates greater tax revenue.²

Public schools have played an important part in closing the gap between wealthy and poor students on measures of intelligence, which helps reduce income inequality.³ A highly educated population is also typically better protected against economic recessions and depressions.⁴

As of the 2019-2020 school year, Cumberland County has 26 school districts, which include 97 total public schools. The majority of these (87) are typical public schools, but there are also five charter schools and four technical schools.

- The charter schools include Baxter Academy for Tech & Sciences in Portland, Harpswell Coastal Academy Division 1 in Harpswell, Harpswell Coastal Academy Divisions 2 and 3 in Brunswick, Maine Connections Academy in Scarborough, and Fiddlehead School of Arts & Science in Gray.
- The technical schools include Lake Region Vocational Center in Naples, Portland Arts & Technology High School in Portland, Westbrook Regional Technology Center in Westbrook, and Maine Region Ten Technical High School in Brunswick.
- The Arthur R. Gould School, Long Creek Youth Development Center's Educational Program (LCYDC), is a state-run college-preparatory program.

Portland Public School District is the largest in the county with 17 individual schools and an enrollment of 6,754. The island school districts are among the smallest: the Long Island Public School District had just 25 students enrolled in 2019-2020 and Chebeague Island Public Schools had 49 students.

² Wolfe, B.L. and R.H. Haveman, Social and Nonmarket Benefits from Education in an Advanced Economy. 2002, Federal Reserve Bank of Boston: Boston, MA.

³ Alexander, K., Public Education and the Public Good. 1997, Social Forces. 76(1): p. 1-30.

⁴ Surn, Andrew, and Ishwar Khatiwada. "The Nation's Underemployed in the Great Recession of 2007-09." Monthly Lab. Rev. 133 (2010): 3.

RSU refers to Regional School Unit and MSAD refers to Maine School Administrative District within Cumberland County. Those schools serve the following communities:

- RSU 05—Freeport and Pownal
- RSU 06/MSAD 06—Standish and Steep Falls
- RSU 14—Raymond and Windham
- RSU 15/MSAD 15—Gray and New Gloucester
- RSU 17/MSAD 17—Harrison
- RSU 51/MSAD 51—Cumberland
- RSU 61/MSAD 61—Bridgton, Casco, and Naples
- RSU 75/MSAD 75—Harpwell

Figure V-12
School Districts and Enrollment, Cumberland County, 2019-2020

School District	# of Schools	Towns/City	Enrollment 2019-2020
Arthur R. Gould School - LCYDC	1	South Portland	28
Baxter Academy for Technology & Science	1	Portland	395
Brunswick Public Schools	4	Brunswick	2,378
Cape Elizabeth Public Schools	3	Cape Elizabeth	1,569
Chebeague Island Public Schools	1	Chebeague Island	49
Falmouth Public Schools	3	Falmouth	2,088
Fiddlehead School of Arts and Sciences	1	Gray	149
Gorham Public Schools	5	Gorham	2,779
Harpswell Coastal Academy	2	Harpswell, Brunswick	181
Long Island Public Schools	1	Long Island	25
Maine Connections Academy	1	Scarborough	394
Portland Public Schools	17	Portland, Cliff Island, Peaks Island	6,754
RSU 05	5	Freeport, Pownal	2,006
RSU 06/MSAD 06	4	Standish, Steep Falls	3,514
RSU 14	6	Raymond, Windham	3,175
RSU 15/MSAD 15	5	Gray, New Gloucester	1,882
RSU 17/MSAD 17	1	Harrison	3,376
RSU 51/MSAD 51	4	Cumberland	2,105
RSU 61/MSAD 61	5	Bridgton, Casco, Naples	1,570
RSU 75/MSAD 75	1	Harpswell	2,443
Scarborough Public Schools	6	Scarborough	3,010
Sebago Public Schools	1	Sebago	205
South Portland Public Schools	8	South Portland	2,971
Westbrook Public Schools	6	Westbrook	2,474
Yarmouth Schools	4	Yarmouth	1,660

Note: Data are unavailable for Brunswick Region Ten Technical High School.

Source: Maine Department of Education and Root Policy Research.

Figure V-13 below shows K-12 enrollment by race and ethnicity. Portland Public Schools has the most diverse student body, with 28% of students identifying as African American/Black and 53% White; comparatively, the city's residents are 10% African American/Black and 78% White. The surrounding school districts of Westbrook and South Portland also have relatively high diversity, as does A.R. Gould.

Figure V-13
K-12 Enrollment by Race and Ethnicity, Cumberland County School Districts, 2019-2020

School District	White	Asian	Black	Native American	Hispanic	Two or more races
Arthur R. Gould School - LCYDC	79%	0%	11%	4%	4%	4%
Baxter Academy for Technology & Science	90%	2%	3%	0.5%	2%	2%
Brunswick Public Schools	85%	2%	2%	0.4%	5%	6%
Cape Elizabeth Public Schools	90%	3%	1%	0.1%	3%	3%
Chebeague Island Public Schools	96%	0%	0%	2%	0%	2%
Falmouth Public Schools	90%	6%	2%	0.4%	1%	0%
Fiddlehead School of Arts and Sciences	91%	0%	5%	0.7%	0%	3%
Gorham Public Schools	90%	2%	2%	0.1%	3%	3%
Harpswell Coastal Academy	94%	0%	1%	0%	1%	4%
Long Island Public Schools	92%	0%	0%	0%	0%	8%
Maine Connections Academy	88%	1%	3%	0.5%	3%	5%
Portland Public Schools	53%	5%	28%	0.3%	8%	6%
RSU 05	93%	2%	1%	0.5%	1%	2%
RSU 06/MSAD 06	92%	1%	1%	0.5%	2%	3%
RSU 14	92%	1%	2%	0.3%	2%	3%
RSU 15/MSAD 15	92%	1%	1%	0.1%	2%	4%
RSU 17/MSAD 17	93%	1%	1%	0.4%	2%	3%
RSU 51/MSAD 51	92%	1%	1%	0.1%	2%	3%
RSU 61/MSAD 61	91%	1%	1%	0.2%	3%	3%
RSU 75/MSAD 75	93%	1%	1%	0.2%	2%	3%
Scarborough Public Schools	89%	6%	3%	0.2%	1%	3%
Sebago Public Schools	87%	2%	2%	1.5%	3%	0%
South Portland Public Schools	72%	4%	12%	0.3%	6%	6%
Westbrook Public Schools	71%	5%	16%	0.2%	4%	3%
Yarmouth Schools	87%	2%	2%	0.1%	2%	6%

Note: Data are unavailable for Brunswick Region Ten Technical High School.

Source: Maine Department of Education and Root Policy Research.

Figure V-14 shows enrollment for students who are more likely to need educational supports to be successful, including students who are economically disadvantaged, students with disabilities, and English Language Learners.

Portland Public Schools are also most likely to be serving students who are learning English: nearly a quarter of the district's student body are English language learners.

Over half of students enrolled in Westbrook School District, Harpswell Coastal Academy, RSU 17 (serving Harrison), and RSU 61 (serving Bridgton and Naples) are economically disadvantaged. In contrast, fewer than 10% of students in Falmouth Public Schools, Cape Elizabeth Public Schools, RSU 51 (serving Cumberland), and Yarmouth Public Schools are economically disadvantaged.

A.R. Gould School is serving the largest share of students with disabilities (57%), followed by Harpswell Coastal Academy (33%).

Figure V-14
K-12 Enrollment by Extenuating Circumstances, Cumberland County, 2019-2020

School District	Economically Disadvantaged	Students with Disabilities	English Language Learners
Arthur R. Gould School - LCYDC	36%	57%	N/A
Baxter Academy for Technology & Science	16%	17%	N/A
Brunswick Public Schools	29%	17%	2%
Cape Elizabeth Public Schools	6%	10%	2%
Chebeague Island Public Schools	N/A	N/A	N/A
Falmouth Public Schools	5%	13%	1%
Fiddlehead School of Arts and Sciences	34%	20%	N/A
Gorham Public Schools	18%	13%	2%
Harpswell Coastal Academy	57%	33%	N/A
Long Island Public Schools	N/A	N/A	N/A
Maine Connections Academy	44%	18%	1%
Portland Public Schools	50%	16%	24%
RSU 05	25%	13%	1%
RSU 06/MSAD 06	32%	19%	0%
RSU 14	26%	16%	1%
RSU 15/MSAD 15	26%	18%	0%
RSU 17/MSAD 17	56%	19%	0%
RSU 51/MSAD 51	6%	13%	0%
RSU 61/MSAD 61	51%	20%	1%
RSU 75/MSAD 75	28%	22%	1%
Scarborough Public Schools	13%	14%	2%
Sebago Public Schools	41%	14%	N/A
South Portland Public Schools	37%	19%	11%
Westbrook Public Schools	59%	21%	17%
Yarmouth Schools	9%	11%	2%

Note: Data are unavailable for Brunswick Region Ten Technical High School.

Source: Maine Department of Education and Root Policy Research.

School districts that serve few students with extenuating circumstances and also higher-income populations tend to have higher standardized testing scores—a typical outcome in

K-12 education. For instance, Cape Elizabeth students met or exceeded state standards in math (67%), English (82%), and science (85%) testing at higher rates than any other district in the county; these students are also the least likely to be economically disadvantaged. Falmouth, Yarmouth, and RSU 51 (serving Cumberland) also had high shares of students meeting or exceeding testing standards and also have low proportions of students who are economically disadvantaged.

Conversely, districts with higher proportions of economically disadvantaged students and/or students with disabilities have lower test scores. For instance, at Harpswell Coastal Academy, where 57% of students are economically disadvantaged, 13% of students met mathematics testing standards. RSU 17 (serving Harrison) and RSU 61 (serving Bridgton and Naples) also had consistently lower test scores than other districts in the county. These data suggest that these districts are in need of more resources and supports to assist their students.

Figure V-15
Percent of Students who Met or Exceeded State Standards in Testing,
Cumberland County, 2018-2019

School District	Math	English	Science
Baxter Academy for Technology & Science	42%	81%	72%
Brunswick Public Schools	44%	63%	74%
Cape Elizabeth Public Schools	67%	82%	85%
Chebeague Island Public Schools	32%	55%	N/A
Falmouth Public Schools	66%	81%	80%
Fiddlehead School of Arts and Sciences	33%	59%	N/A
Gorham Public Schools	46%	68%	69%
Harpwell Coastal Academy	13%	31%	40%
Long Island Public Schools	46%	N/A	N/A
Maine Connections Academy	29%	66%	61%
Portland Public Schools	35%	55%	52%
RSU 05	55%	70%	77%
RSU 06/MSAD 06	25%	49%	53%
RSU 14	33%	60%	59%
RSU 15/MSAD 15	41%	61%	59%
RSU 17/MSAD 17	23%	43%	49%
RSU 51/MSAD 51	65%	81%	81%
RSU 61/MSAD 61	27%	50%	49%
RSU 75/MSAD 75	40%	59%	58%
Scarborough Public Schools	54%	75%	75%
Sebago Public Schools	34%	59%	50%
South Portland Public Schools	38%	58%	62%
Westbrook Public Schools	28%	45%	46%
Yarmouth Schools	66%	79%	76%
Statewide	36%	56%	60%

Note: Data are unavailable for Brunswick Region Ten Technical High School and for A.R. Gould School,

Source: Maine Department of Education and Root Policy Research.

Figure V-16 shows how test scores vary by race and ethnicity. Mathematics proficiency varies considerably across races and ethnicities and among school districts. Compared to

the state overall, Maine Connections Academy, RSU 06/MSAD 06, RSU 14, RSU 17/MSAD 17, RSU 61/MSAD 61, and Westbrook School Districts have lower proficiency (with Portland about the same).

Hispanic students in the majority of the county's school districts outperform their peers in the state (the exception is RSU 14). Similarly, the majority of districts' African American/Black students outperform their peers; proficiency is lower for Portland and South Portland Districts. Asian students do worse than their peers in Portland, RSU 06/MSAD 06, RSU 14, and Westbrook Public School Districts.

White students underperformed their state peers in Maine Connections Academy, RSU 06/MSD 06, RSU 14, RSU 17/MSAD 17, RSU 61/MSAD 61, and Westbrook Public Schools.

Schools where proficiency varied the most among students were:

- Falmouth, where 38% of African American/Black students are proficient, compared to 66% of all students (28 percentage point gap);
- Long Island, where 23% of African American/Black students are proficient, compared to 46% of all students (23 percentage point gap);
- Scarborough Public Schools where just 16% of Black students met or exceeded math testing standards, compared to 54% of students overall, for a 38 percentage point gap.

In contrast, in RSU 17/MSAD 17, African American/Black students far exceed White students' performance (24 percentage point gap).

Figure V-16
Mathematics State Testing Proficiency, by Race and Ethnicity, Cumberland
County, 2018-2019

School District	White	Asian	Black	Hispanic	All Students
Brunswick Public Schools	44%	N/A	N/A	54%	44%
Cape Elizabeth Public Schools	68%	N/A	N/A	57%	67%
Falmouth Public Schools	66%	69%	38%	N/A	66%
Gorham Public Schools	47%	56%	41%	N/A	46%
Long Island Public Schools	N/A	N/A	23%	N/A	46%
Maine Connections Academy	29%	N/A	N/A	N/A	29%
Portland Public Schools	49%	33%	12%	N/A	35%
RSU 05	56%	75%	N/A	N/A	55%
RSU 06/MSAD 06	26%	41%	N/A	N/A	25%
RSU 14	35%	30%	N/A	19%	33%
RSU 15/MSAD 15	41%	N/A	N/A	64%	41%
RSU 17/MSAD 17	23%	55%	47%	N/A	23%
RSU 51/MSAD 51	66%	N/A	N/A	47%	65%
RSU 61/MSAD 61	27%	N/A	N/A	N/A	27%
RSU 75/MSAD 75	40%	N/A	N/A	29%	40%
Scarborough Public Schools	54%	65%	16%	N/A	54%
South Portland Public Schools	42%	N/A	11%	27%	38%
Westbrook Public Schools	32%	37%	N/A	N/A	28%
Yarmouth Schools	67%	65%	N/A	N/A	66%
Statewide	37%	49%	13%	27%	36%

Note: Data are unavailable for Brunswick Region Ten Technical High School and for A.R. Gould School. Samples disaggregated by race are unavailable in Chebeague Island Public Schools, Baxter Academy for Technology and Science, Fiddlehead School of Arts and Sciences, Harpswell Coastal Academy, and Sebago Public Schools.

Source: Maine Department of Education and Root Policy Research.

Figure V-17 shows math proficiency for economically disadvantaged, students with disabilities, and English Language Learners.

- Among economically disadvantaged students, Baxter Academy had the highest pass rate, where 53% of economically disadvantaged students met or exceeded mathematics standards. Falmouth Public Schools also had a high rate at 41%. Statewide, 22% of economically disadvantaged students are math proficient.

- Among students with disabilities, Cape Elizabeth (30%) and Falmouth Public Schools (29%) had the highest proficiency rates—3x the state proficiency rate. Students with disabilities have very low proficiency statewide at 10%, indicating a significant shortage of resources to address learning gaps.
- Similarly, English Language Learners also have very low proficiency statewide (8%). Most Cumberland County schools exceeded the statewide rate, with Falmouth and Gorham Public Schools posting the highest rates of proficiency at 38% and 44%. The lowest was for Portland, South Portland, and Westbrook Public Schools which were lower than the already very low state rate.
- Among school districts, the widest proficiency gaps were in Cape Elizabeth, where 25% of economically disadvantaged students met standards compared to 67% of students overall—a 42 percentage point gap. Cape Elizabeth schools have some of the lowest shares of economically disadvantaged, students with disabilities, and English Language Learners. Similarly, in Yarmouth, where just 29% of economically disadvantaged students met standards compared to 66% of students overall, there was a 38 percentage point gap. This suggests that in Cape Elizabeth and Yarmouth, low-income students may be falling through the cracks.

Figure V-17
Mathematics State Testing Proficiency for Economically Disadvantaged, Students with Disabilities, and English Language Learners, Cumberland County, 2018-2019

School District	Economically Disadvantaged	Students with Disabilities	English Language Learners	All Students
Baxter Academy for Technology & Science	53%	N/A	N/A	42%
Brunswick Public Schools	18%	10%	N/A	44%
Cape Elizabeth Public Schools	25%	30%	N/A	67%
Falmouth Public Schools	41%	29%	38%	66%
Gorham Public Schools	30%	16%	44%	46%
Harpswell Coastal Academy	11%	N/A	N/A	13%
Maine Connections Academy	22%	N/A	N/A	29%
Portland Public Schools	16%	10%	5%	35%
RSU 05	33%	18%	N/A	55%
RSU 06/MSAD 06	14%	7%	N/A	25%
RSU 14	20%	6%	N/A	33%
RSU 15/MSAD 15	25%	17%	N/A	41%
RSU 17/MSAD 17	16%	7%	N/A	23%
RSU 51/MSAD 51	36%	17%	N/A	65%
RSU 61/MSAD 61	20%	9%	N/A	27%
RSU 75/MSAD 75	29%	13%	N/A	40%
Scarborough Public Schools	33%	15%	23%	54%
Sebago Public Schools	28%	N/A	N/A	34%
South Portland Public Schools	23%	14%	7%	38%
Westbrook Public Schools	18%	9%	6%	28%
Yarmouth Schools	29%	16%	29%	66%
Statewide	22%	10%	8%	36%

Note: Data are unavailable for Brunswick Region Ten Technical High School and for A.R. Gould School. Samples disaggregated by race are unavailable in Chebeague Island Public Schools, Baxter Academy for Technology and Science, Fiddlehead School of Arts and Sciences, Harpswell Coastal Academy, and Sebago Public Schools.

Source: Maine Department of Education and Root Policy Research.

Another measure of school quality is high school graduation and college attendance rates, shown in Figure V-18.

Cape Elizabeth, RSU 51, and Scarborough Public Schools had the highest four-year graduation rates in the county in the 2019-2020 academic year. A.R. Gould, Maine Connections Academy, and Harpswell Coastal Academy had the lowest, at 45%, 61%, and 74%, respectively. Among the more typical public schools, RSU 6 and RSU 17 had four-year graduation rates below 85%.

Among graduating seniors, many pursued post-secondary education. The rate of pursuit was highest in Yarmouth (89%), RSU 51 (89%), Falmouth (88%), and Scarborough (85%). The college-going rate was lowest in RSU 61 (50%), RSU 6 (54%), Maine Connections Academy (55%) and RSU 17 (56%).

Figure V-18
Graduation and College Going Rates, Cumberland County, 2019-2020

School District	4-year Graduation Rate	5/6 year Graduation Rate	College-Going Rate
Arthur R. Gould School - LCYDC	45%	45%	N/A
Baxter Academy for Technology & Science	94%	100%	78%
Brunswick Public Schools	86%	94%	69%
Cape Elizabeth Public Schools	100%	98%	82%
Falmouth Public Schools	N/A	N/A	88%
Gorham Public Schools	94%	95%	77%
Harpwell Coastal Academy	74%	N/A	N/A
Maine Connections Academy	61%	67%	55%
Portland Public Schools	88%	90%	74%
RSU 05	N/A	96%	71%
RSU 06/MSAD 06	81%	87%	54%
RSU 14	87%	91%	67%
RSU 15/MSAD 15	91%	91%	57%
RSU 17/MSAD 17	82%	83%	56%
RSU 51/MSAD 51	96%	97%	89%
RSU 61/MSAD 61	91%	88%	50%
RSU 75/MSAD 75	88%	92%	60%
Scarborough Public Schools	95%	97%	85%
South Portland Public Schools	91%	90%	68%
Westbrook Public Schools	87%	87%	66%
Yarmouth Schools	N/A	100%	89%
Statewide	88%	90%	65%

Note: Data are unavailable for Brunswick Region Ten Technical High School.

Source: Maine Department of Education and Root Policy Research.

Chronic absenteeism. Chronic absenteeism can be an indicator of access to opportunity, with poor attendance in school linked to **lower** outcomes in standardized testing, graduation rates, and overall academic achievement.⁵ A report on chronic absenteeism by the U.S. Department of Education found that students of color and

⁵ <https://www.ednc.org/eraceing-inequities-chronic-absenteeism/>

students experiencing disabilities experience higher rates of chronic absenteeism compared to their non-Hispanic White counterparts and students without disabilities.⁶

In Maine, as in the U.S., chronic absenteeism disproportionately affects certain students of color. In 2021, 21% of the state's students were chronically absent, a 27% increase from 2018. Native American (42%) and African American/Black(35%) students experienced the highest rates of chronic absenteeism statewide, while Asian (15%) and White (20%) experienced the lowest rates.

Similar to the country and state students of color experience higher rates of chronic absenteeism than their White counterparts in Cumberland County (Figure V-19). School districts with the highest rates of chronic absenteeism among African American/Black students were Baxter Academy for Technology & Science (54%), RSU 61/MSAD 61 (37%), and RSU 06/MSAD 06 (24%). For Hispanic students, Baxter Academy for Technology & Science (75%), Portland Public Schools (27%), RSU 14 (27%), and Westbrook Public Schools (26%) had the highest rates. Students who identified as two or more races had the highest chronic absenteeism rates in Westbrook Public Schools (27%), RSU 06/MSAD 06 (26%), Portland Public Schools (22%), and RSU 17/MSAD 17 (22%). Long Island Public Schools (58%) and Harpswell Coastal Academy (47%) have the highest rates of chronic absenteeism among White students.

South Portland Public Schools (8%) and Portland Public Schools (13%) have the lowest chronic absenteeism rates for African American/Black students. The lowest rates for Hispanic students are found in Brunswick Public Schools (11%) and RSU 75/MSAD 75 (13%). Yarmouth Schools (7%) and RSU 51/MSAD 51 (9%) have the lowest rates for students who identify with two or more races. In addition to Cape Elizabeth Public Schools and Scarborough Public Schools, RSU 51/MSAD 51 also have the lowest chronic absenteeism rates for White students (9% each, respectively).

⁶ <https://www2.ed.gov/datastory/chronicabsenteeism.html>

Figure V-19
Chronic Absenteeism Rates by Race and Ethnicity, Cumberland County,
2019-2020

School District	White	Asian	Black	Native American	Hispanic	Two or more races
Baxter Academy for Technology & Science	36%	*	54%	*	75%	*
Brunswick Public Schools	12%	*	23%	*	11%	15%
Cape Elizabeth Public Schools	9%	*	*	*	*	*
Falmouth Public Schools	10%	*	*	*	*	*
Gorham Public Schools	11%	*	*	*	18%	18%
Harpswell Coastal Academy	47%	*	*	*	*	*
Long Island Public Schools	58%	*	*	*	*	*
Portland Public Schools	17%	21%	13%	*	27%	22%
RSU 05	14%	*	*	*	*	14%
RSU 06/MSAD 06	20%	*	24%	31%	14%	26%
RSU 14	13%	*	*	*	27%	14%
RSU 15/MSAD 15	11%	*	*	*	*	15%
RSU 17/MSAD 17	19%	*	*	*	18%	22%
RSU 51/MSAD 51	9%	*	*	*	*	9%
RSU 61/MSAD 61	21%	*	37%	*	18%	18%
RSU 75/MSAD 75	12%	*	*	*	13%	11%
Scarborough Public Schools	9%	*	14%	*	22%	*
South Portland Public Schools	11%	*	8%	*	18%	14%
Westbrook Public Schools	23%	*	20%	*	26%	27%
Yarmouth Schools	10%	*	16%	*	*	7%

Note: Data are unavailable for Brunswick Region Ten Technical High School. Samples disaggregated by race are unavailable in Arthur R. Gould School, Chebeague Island Public Schools, Fiddlehead School of Arts and Sciences, Maine Connections Academy, and Sebago Public Schools.

Source: Maine Department of Education and Root Policy Research.

Restraints and seclusion. Beginning in 2012, the Maine Department of Education has been required by the state legislature to collect and provide data on the use of physical restraint and seclusion in Maine schools. A 2012 report by the U.S. Department of Education emphasized that physical restraints⁷ and seclusion⁸ are detrimental not only to the physical well-being of students but also to their academic achievement.

In 2020, Cumberland County school districts reported 519 restraint incidents. The school districts with the highest number of restraints were Scarborough Public Schools (91), followed by Portland Public Schools (89), and RSU 15/MSAD 15 (59). Several school districts, including Arthur R. Gould School, Baxter Academy, Cape Elizabeth Public Schools, Chebeague Island Public Schools, Long Island Public Schools, Maine Connections Academy, and Sebago Public Schools, reported no restraint incidents. Incidents of restraints in Cumberland County school districts have been falling since peaking in 2016 (1,523 restraint incidents reported).⁹

In 2020, Cumberland County school districts reported 714 incidents of seclusion. Scarborough Public Schools (199) reported the greatest number of seclusions, followed by South Portland Public Schools (98), Portland Public Schools (72), and RSU 06/MSAD 06 (72). Arthur R. Gould School, Baxter Academy, Chebeague Island Public Schools, Fiddlehead School of Arts and Sciences, Long Island Public Schools, Maine Connections Academy, RSU 15/MSAD 15 and Sebago Public Schools reported no incidents of seclusion in 2020. Since 2014, the number of reported seclusion incidents has remained relatively steady, peaking in 2019 (1,157).

Community colleges and job skills training. In the resident survey, nearly 30% of respondents who identified as single parents articulated a need for financial assistance for job training or college.

Southern Maine Community College (SMCC) is the only community college located in Cumberland County. It is the largest community college in the state and as of fall 2019, serves nearly 10,000 individuals annually at its South Portland and Brunswick campuses, as well as online and at satellite locations across southern Maine. Of students enrolled in the

⁷ The U.S. Department of Education defines *physical restraint* as a personal restriction that immobilizes or reduces the ability of a student to move [their] torso, arms, legs, or head freely. Maine DOE does not provide a definition for *physical restraint*.

⁸ The U.S. Department of Education defines *seclusion* as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming. Maine DOE does not provide a definition for *seclusion*.

⁹ Maine Department of Education provides data on the number of restraints and seclusions by school district beginning in 2014.

Fall of 2019, over half lived in Cumberland County (54%). The next greatest proportion of students who attended SMCC lived in York County (23%) and Sagadahoc County (7%).

In fall 2019, 79% of the student population identified as White. The next greatest proportion of students were African American/Black (7%), Hispanic (3%), Asian (2%), and Native American (<1%). Four percent of students did not report their race or ethnicity. Additionally, 57% of student are considered first generation¹⁰ while 60% are considered low income. The faculty at SMCC is considerably less diverse than the student population, with 99% of the faculty identifying as White.

The level of college preparedness differs among students of different racial and ethnic backgrounds. Of degree seeking students entering SMCC during the fall of 2019, over 60% of African American/Black students were required to take one or more college preparatory classes. Just over 40% of Asian students were also required to take these courses, as well as just under 40% of Hispanic students. Just under 30% of White students were required to take similar classes.

SMCC also provides workforce training opportunities for students, which are short-term courses that prepare individuals for employment. These classes are often grant funded and require no payment from qualified applicants. The number of students enrolled in the workforce development courses has increased by 56% over the last four years, with 853 students enrolled for the 2019-2020 school year.

In addition to workforce training opportunities available at SMCC, several other programs and organizations exist to provide employment readiness and job training services throughout the county.

- CareerCenter, which is part of the Maine Department of Labor, offers employment and training services free of charge for Maine workers and businesses. There are two of these centers located in the county: the Greater Portland CareerCenter is located in Portland and the Southern Midcoast CareerCenter is located in Brunswick.
- The Senior Community Service Employment Program (SCSEP) offers job training opportunities for low income Mainers over the age of 55. The program is funded through a grant administered by the U.S. Department of Labor. In Cumberland County, the grant is administered by the Office of Aging and Disability Services (OADS).
- Workforce Solutions Maine, operated by Goodwill Northern New England, serves six Maine counties (Cumberland, Knox, Lincoln, Sagadahoc, Waldo, and York) and provides adult and youth employment services, including on-the-job training, job coaching, one-on-one counseling, and additional support service. According to the

¹⁰ First generation students are defined by SMCC as students whose parent(s) or legal guardian(s) have not completed a bachelor's degree.

website, auxiliary aids and services are available to individuals with disabilities upon request.

Resident perspectives on education. In the resident survey, respondents were asked to share their perspectives on several different issues related to schools and education. A summary of those perspectives is provided below.

One issue identified in the resident survey by several respondents was a desire to make choosing a different school for their child(ren) easier. Over a quarter of single parent households (26%) and more than one in five households with children under 18 (21%) expressed a need for more flexibility in choosing schools as a means to improving their children's education.

Respondents most likely to say stop bullying/crime/drug use at school:

- African American, 32%
- Single parents, 31%
- Windham, 24%
- Households with children under 18, 19%

Respondents most likely to articulate a need for more activities after school:

- Households with children under 18, 30%
- Large households, 27%
- Households making more than \$100,000, 18%
- Homeowners, 14%

Respondents most likely to articulate the need for better school facilities:

- Single parents, 29%
- Households with children under 18, 26%
- Large households, 20%
- Households making more than \$100,000, 18%
- Westbrook, 17%

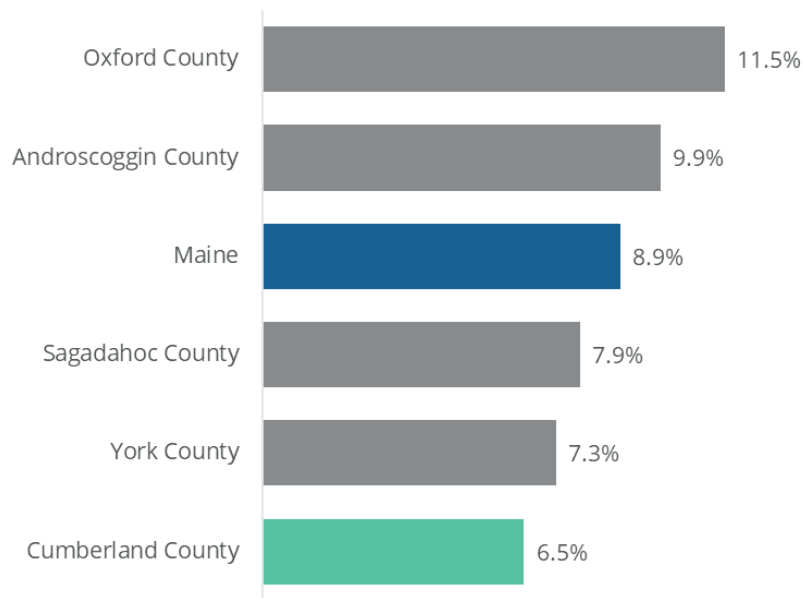
Maintaining the Ability to Work

This section examines barriers to work and economic productivity. Access to high-speed internet and childcare are each important components to labor force participation and business formation. This section is followed by an examination of how transportation systems affect access to work.

Internet, innovation, and productivity. Although not explicitly mentioned in the fair housing guidance¹¹, the pandemic revealed that access to high-speed Internet creates employment and education opportunities that otherwise would not be possible. Recent studies have found that broadband access increases rates of firm start-ups, particularly in rural areas and especially among women entrepreneurs in rural areas.¹²

According to 5-year 2020 ACS data, 6.5% of Cumberland County households do not own a computer, including a smartphone or tablet. The proportion of Portland residents without a computer is slightly higher at 7.8%. Cumberland County's proportion of residents without a computer is lower than the statewide average of 8.9% and is the lowest among peer counties.

Figure V-20.
Percent of Households without a Computer, County, Peer Counties, and Maine, 2020



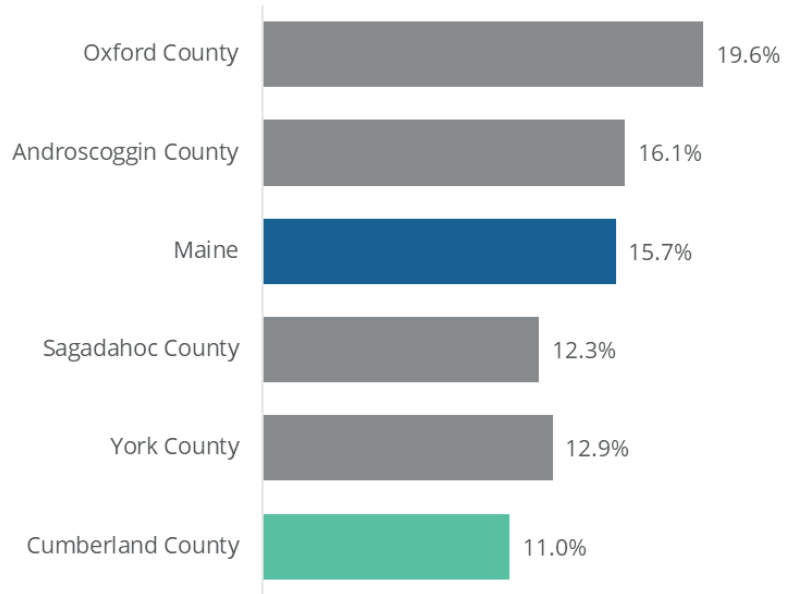
Source:
 5-year 2020 ACS estimates and
 Root Policy Research.

Additionally, 11% of Cumberland County households do not have a broadband internet subscription, which is again the lowest rate among peer counties. The share of Portland residents without a broadband internet subscription is slightly higher at 12.6%. Both rates are lower than the statewide average (15.7%).

¹¹ Current guides were developed before the Internet was a normal component of work.

¹² Conroy, Tessa, and Sarah A. Low. "Entrepreneurship, Broadband, and Gender: Evidence from Establishment Births in Rural America." *International Regional Science Review* (2021): 01600176211018749.

**Figure V-21.
Percent of
Households
without
Broadband
Internet,
Cumberland
County, Peer
Counties, and
Maine 2020**



Source:
5-year 2020 ACS estimates and
Root Policy Research.

Limited access to the Internet is much more prevalent among lower income households in Cumberland County:

- 40.7% of Cumberland County households with an income less than \$20,000 do not have a broadband internet subscription.
- This compares with 16.8% of households with incomes between \$20,000 and \$74,999, and just 4.8% of households with income, above \$75,000.

These disparities exacerbate the economic inequalities among households by limiting low income households’ ability to access and retain higher wage jobs, in addition to accessing education, financial, and health care services.

Childcare deserts. School and preschool enrollment, early childhood education, and childcare not only benefit children, but also allow parents to participate in the labor force. Adequate childcare can be a solution to the declining labor force participation rates discussed above.

According to research from the Minneapolis Federal Reserve, early childhood “programs that offer enriched experiences for children and involve parents and other caregivers provide benefits for all children but have the strongest impact on children from disadvantaged environments.”¹³ Other studies have shown that inadequate access to childcare constrains local economic activity. For example, many scholars have found that presence of young children in the household reduces women’s likelihood of labor force

¹³ Rob Grunewald, “Investments in Young Children Yield High Public Returns,” Federal Reserve Bank of Minneapolis, 2016. Available at www.philadelphiafed.org/community-development/publications/cascade/93/04_investments-in-young-children

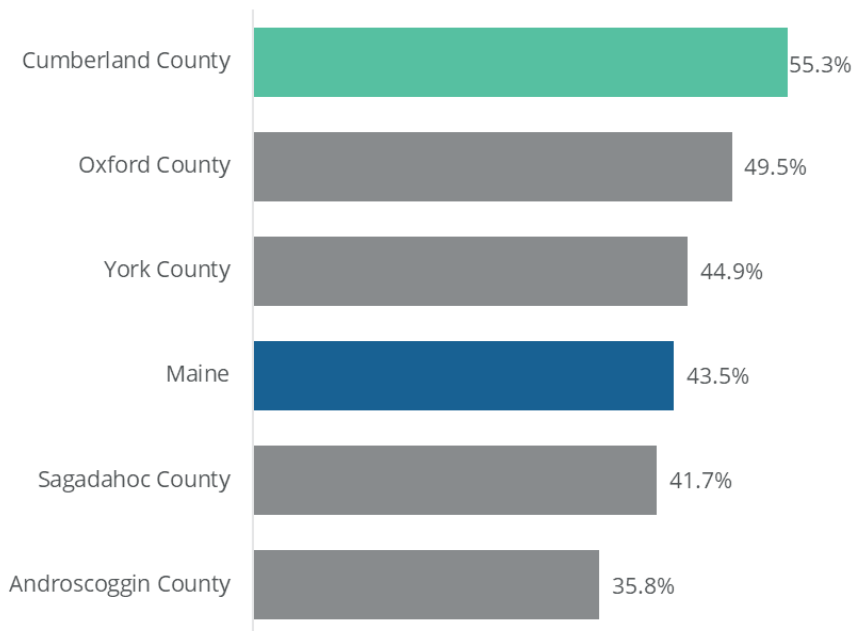
participation. A 2019 study found that this can be mitigated by childcare availability.¹⁴ Other studies have found that parent absenteeism and productivity reductions due to childcare breakdowns cost U.S. businesses more than \$3 billion annually.¹⁵

Overall, Cumberland County's childcare infrastructure is robust compared to the state as a whole.

School enrollment data from 2020 5-year ACS indicate that 55% of 3- to 4-year-olds in Cumberland County are enrolled in preschool, which is substantially higher than the statewide average and peer counties. The county rate is also higher compared to the proportion of 3-to-4-year-olds enrolled in preschool in Portland (48%). This frees up many families to participate in the labor force, in addition to providing a stronger foundation for young learners.

Figure V-22.
**Percent of 3- to 4-
Year-Old Children
Enrolled in School,
Cumberland
County, Peer
Counties and
Maine, 2020**

Source:
5-year 2020 ACS estimates and
Root Policy Research.



However, some households in Maine and Cumberland County do not have adequate access to childcare outside of school. A childcare desert is defined as an area where there are more than three times as many children as licensed childcare slots. According to research done by the Center for American Progress, 22% of people in Maine lived in a

¹⁴ Conroy, Tessa. "The kids are alright: working women, schedule flexibility and childcare." *Regional Studies* 53.2 (2019): 261-271.

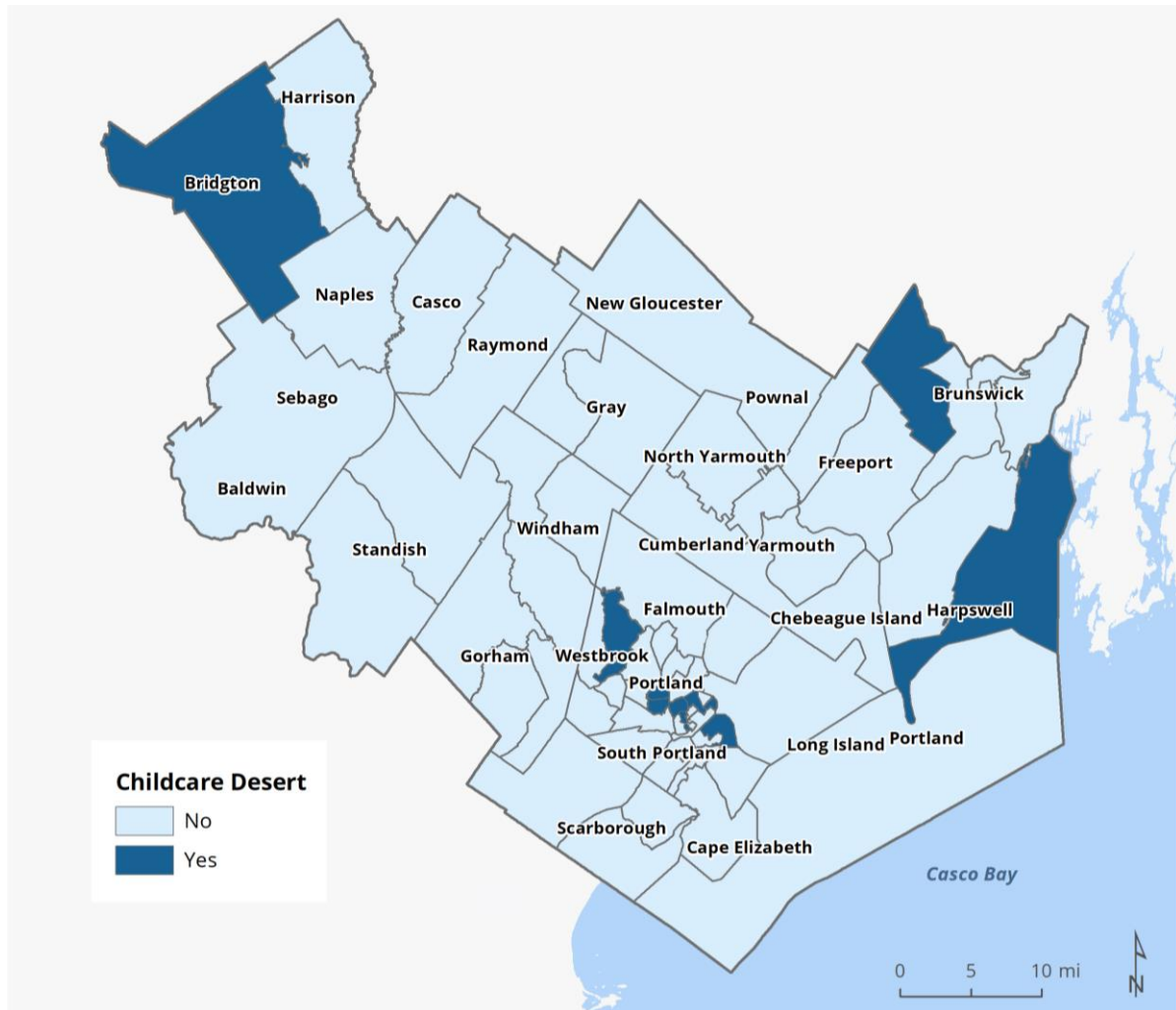
¹⁵ Rob Grunewald, "Investments in Young Children Yield High Public Returns," Federal Reserve Bank of Minneapolis, 2016. Available at www.philadelphiafed.org/community-development/publications/cascade/93/04_investments-in-young-children

childcare desert in 2018.¹⁶ Though this is among the lowest rates in the nation, there are disparities among some populations, with the largest being for low income families: 26% of Hispanic families, 26% of rural families, and 38% of low-income families in Maine live in childcare deserts.

Using the Center for American Progress data, census tracts with childcare deserts in Cumberland County were identified in Greater Portland (Portland, South Portland, and Westbrook), Bridgton, Brunswick and Harpswell (Figure V-23). These areas are small in numbers, indicating that the region does a relatively good job of providing childcare opportunities for working families.

¹⁶ <https://childcaresdeserts.org/2018/?state=ME>

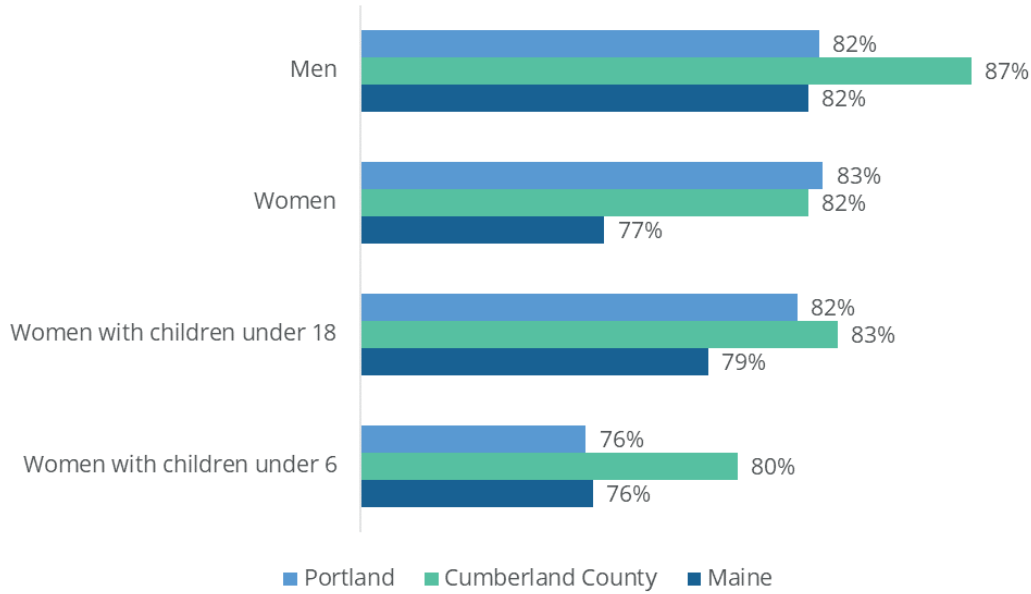
Figure V-23.
Childcare Deserts in Cumberland County by Census Tract, 2018



Source: 2018 Center for American Progress data and Root Policy Research.

The provision of childcare in the region appears to have boosted employment rates among women. Overall, Portland and Cumberland County women are more likely to participate in the labor force than women in the state overall. While Portland women with children are one percentage point *less likely* to participate in the labor force than Portland women overall, Cumberland County women with children are one percentage point *more likely* than county women overall to participate in the labor force. Additionally, 80% of women with young children in the county are participants in the labor force, which is higher than women with young children in Portland and statewide (76% each, respectively).

Figure V-24.
Labor Force Participation Rates by Gender and Parental Status, Portland, Cumberland County, and Maine, 2020



Note: Labor force participation rates for population within age 24 to 64 years. Data for men with children are not available.

Source: 2020 5-year ACS estimates and Root Policy Research.

Stakeholder perspectives. Stakeholders were also asked to give their perceptions on childcare availability in Cumberland County. One stakeholder felt that because of the lack of services available in more rural areas of the county, there are few, if any, affordable childcare options. Another stakeholder said there were plenty of employment opportunities available in the greater Portland region but that “you need childcare in place to take advantage of them.” Another stakeholder added that families, particularly single mothers, with children who have medical conditions that don’t allow them to be in daycare cannot join the labor force.

Access to Transportation

This section discusses current commuting patterns and transportation costs in Cumberland County. Affordable and reliable transportation options allow communities to access employment opportunities, school and other amenities, such as grocery stores, parks, and healthcare. For those who cannot afford or choose not to use a private vehicle, other transportation options allow for residents' full participation in society.

Commuting patterns. Countywide, 82% of residents got to work in a car, truck, or van according to 5-year 2020 American Community Survey data. Eight percent of commuters countywide carpooled, but the proportion of commuters carpooling was much higher in Naples (16%), Casco (15%), Harpswell (14%), Baldwin (12%), and Scarborough (12%). Carpooling efforts may be related to affordability, environmental consciousness, or lack of public transit options.

One percent of Cumberland County residents took public transportation to work, but rates were significantly higher in Long Island (22%). The high usage rate in Long Island can be attributed to the ferry service required to travel between Long Island and the mainland. Other relatively high rates of public transportation use are found in Chebeague Island (3.7%), South Portland (3.6%), and Portland (2.5%). Over 6% of county residents either walked or biked to work, with the highest rates of workers walking/biking found in Portland (15%), Brunswick (11%), Freeport (9%), and Long Island (8%).

Figure V-25a.
Commute Type, District 1 Jurisdictions and County, 2020

Jurisdiction	Drove alone	Carpooled	Public transit	Walked or biked	Taxi, motorcycle or other	Worked from home
Baldwin	82%	12%	0.4%	3%	1%	2%
Bridgton	87%	6%	0.0%	3%	0%	4%
Gorham	72%	10%	0.3%	7%	2%	9%
Scarborough	73%	12%	0.2%	2%	1%	12%
Sebago	82%	7%	0.0%	0%	1%	10%
Standish	78%	8%	0.1%	4%	2%	8%
Cumberland County	73%	8%	1%	6%	1%	10%

Source: 2020 5-year ACS estimates and Root Policy Research.

Figure V-25b.
Commute Type, District 2 Jurisdictions and County, 2020

Jurisdiction	Drove alone	Carpooled	Public transit	Walked or biked	Taxi, motorcycle or other	Worked from home
Casco	64%	15%	0.0%	3%	0%	18%
Falmouth	74%	7%	0.7%	3%	1%	14%
Gray	83%	9%	0.1%	1%	0%	7%
Harrison	86%	5%	0.0%	0%	0%	9%
Naples	71%	16%	0.0%	0%	0%	12%
New Gloucester	82%	5%	0.2%	0%	1%	11%
Raymond	76%	9%	0.2%	1%	0%	13%
Windham	84%	8%	0.3%	0%	0%	7%
Cumberland County	73%	8%	1%	6%	1%	10%

Source: 2020 5-year ACS estimates and Root Policy Research.

Figure V-25c.
Commute Type, District 3 Jurisdictions and County, 2020

Jurisdiction	Drove alone	Carpooled	Public transit	Walked or biked	Taxi, motorcycle or other	Worked from home
Brunswick	69%	7%	0.2%	11%	1%	11%
Chebeague Island	59%	5%	3.7%	7%	4%	22%
Cumberland	78%	4%	1.3%	1%	0%	16%
Freeport	72%	6%	0.4%	9%	0%	13%
Harpwell	67%	14%	0.0%	3%	2%	14%
Long Island	48%	7%	21.6%	8%	4%	13%
North Yarmouth	81%	8%	0.0%	1%	0%	9%
Pownal	82%	7%	0.5%	0%	1%	10%
Yarmouth	77%	7%	0.3%	2%	1%	12%
Cumberland County	73%	8%	1%	6%	1%	10%

Source: 2020 5-year ACS estimates and Root Policy Research.

Figure V-25d.
Commute Type, District 4 Jurisdictions and County, 2020

Jurisdiction	Drove alone	Carpooled	Public transit	Walked or biked	Taxi, motorcycle or other	Worked from home
Cape Elizabeth	78%	4%	0.4%	1%	0%	16%
South Portland	76%	8%	3.6%	3%	3%	6%
Westbrook	83%	6%	0.7%	1%	1%	8%
Cumberland County	73%	8%	1%	6%	1%	10%

Source: 2020 5-year ACS estimates and Root Policy Research.

Figure V-25e.
Commute Type, District 4 Jurisdictions and County, 2020

Jurisdiction	Drove alone	Carpooled	Public transit	Walked or biked	Taxi, motorcycle or other	Worked from home
District 5 - Portland	62%	9%	2.5%	15%	1%	11%
Cumberland County	73%	8%	1%	6%	1%	10%

Source: 2020 5-year ACS estimates and Root Policy Research.

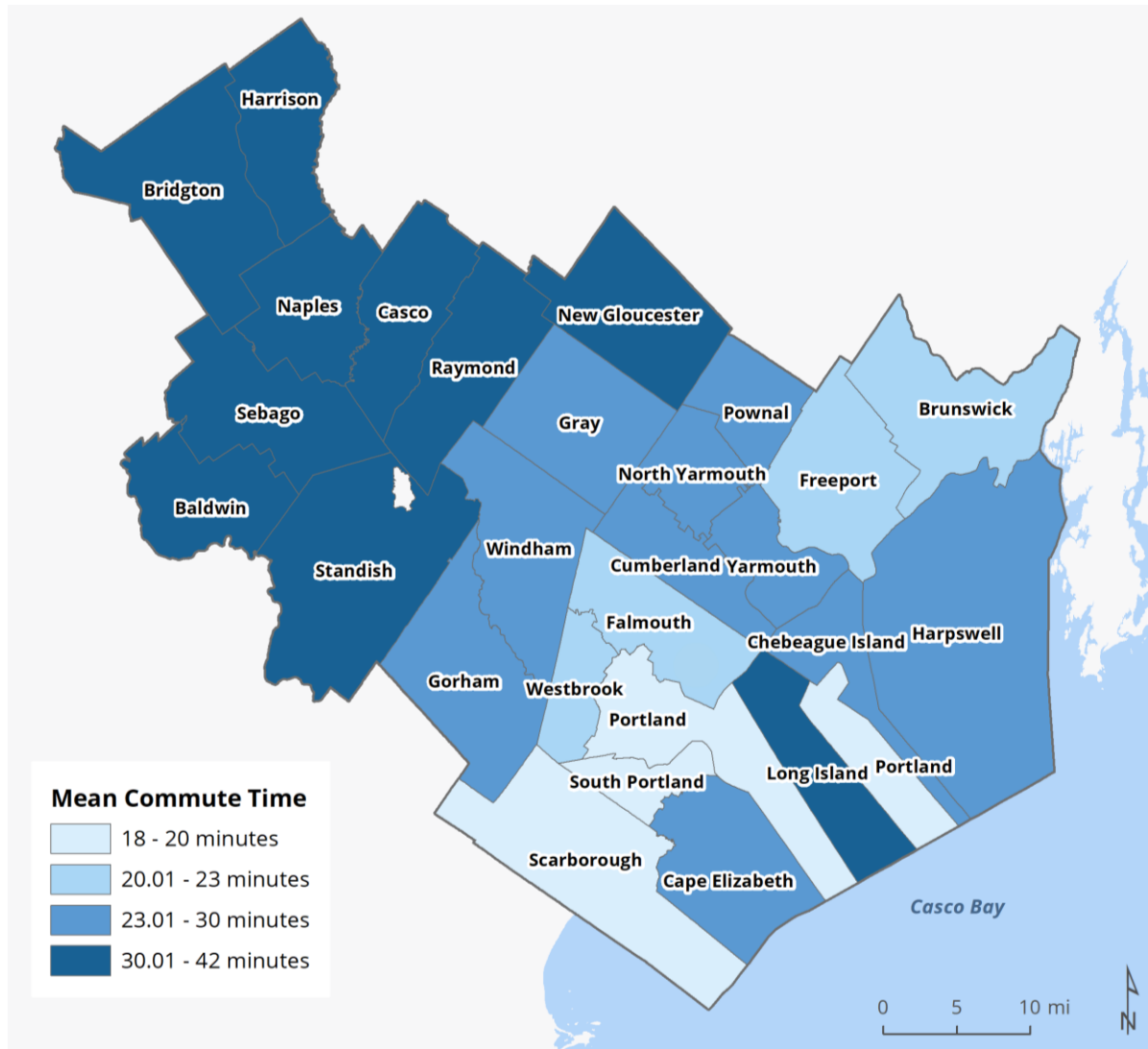
The data illustrate that county residents largely rely on cars to get to work, and, as long as these trends remain, funding alternative modes of transportation can be challenging. The lack of transportation options disproportionately affects those who cannot afford a car. Countywide, 2.5% of workers do not have access to a car, with the highest rates in Portland (6%) and Baldwin (3.4%).

Before the pandemic, in 2019, 7% of county residents worked from home. The percent of workers who worked from home was especially high in Cape Elizabeth (15%), Casco (13%), Harpswell (13%), Yarmouth (12%), and Freeport (11%). Jurisdictions where workers were least likely to work from home include Bridgton (3%), Baldwin (3%), and Westbrook (4%). During the pandemic, far more workers worked from home. Over one in ten workers in Cumberland County worked from home in 2020, a three percentage point increase since 2019. The highest proportion of workers who worked from home lived in Chebeague Island (22%), Casco (18%), Cape Elizabeth (16%), and Cumberland (16%).

Working from home cut down on long commute times for many in Cumberland County. Across the county, mean travel time to work was 23 minutes. As illustrated in Figure V-26, average commute times were highest in the communities in the western portion of the county, particularly Sebago (42 minutes), Naples (39 minutes), and Baldwin (36 minutes). In fact, 20% of workers in Sebago, 17% of workers in Naples, and 12% of workers in Baldwin

had commutes over an hour long. Average commute times were lowest in South Portland (18 minutes), Scarborough (19 minutes), and Portland (20 minutes).

Figure V-26.
Mean Commute Time by Jurisdiction, 2020



Source: 2020 5-year ACS estimates and Root Policy Research.

Overall, 10% of Cumberland County workers commute to a county different from the one in which they live and 2% commute outside the state. Bridgton, which is in close proximity to the state border, had the highest proportion of workers among county jurisdictions who worked out of state (16%).

More than one in five workers residing in New Gloucester, Harpswell, Harrison, Sebang, Baldwin, and Brunswick commute to other counties in Maine for their jobs. Workers

residing in South Portland, Windham, Falmouth, Portland, and Yarmouth are least likely to commute to another county for work.

Transportation costs. According to the Housing and Transportation Affordability Index, county residents spend 22% of their income on transportation. In general, transportation costs appear relatively lower for residents in close proximity to the Greater Portland area. Of transportation costs by municipality provided by the Index, Portland (18%), South Portland (20%), and Westbrook (21%) residents had the lowest transportation costs while Cumberland and Standish had the highest (25% each, respectively).

Residents' overall transportation situation. According to the Pew Research Center, Americans who are lower-income, African American/Black, Hispanic, immigrants, or under the age of 50 are most likely to use public transportation.¹⁷ People experiencing disabilities are also more likely than those without disabilities to rely on public transportation.¹⁸

The resident survey found that county respondents were fairly satisfied with their transportation situation (74% of respondents indicated they were either entirely or mostly satisfied). However, households of color were more likely to express dissatisfaction with their current transportation situation. Groups with the highest proportion of respondents who were somewhat unsatisfied or not at all satisfied with their transportation choices included:

- Brunswick respondents (52%);
- Hispanic respondents (42%);
- Other Race respondents (38%);
- Precariously housed respondents (34%);
- Asian respondents (33%);
- Households making less than \$25,000 (33%);
- Large households¹⁹ (33%);
- Households with a member experiencing a disability (33%); and

¹⁷ <https://www.pewresearch.org/fact-tank/2016/04/07/who-relies-on-public-transit-in-the-u-s/>

¹⁸ <https://www.bts.gov/sites/bts.dot.gov/files/2022-01/travel-patterns-american-adults-disabilities-updated-01-03-22.pdf>

¹⁹ "Large households" are considered those with five or more persons residing in a respective household.

- African American respondents (31%).

Stakeholders were also asked to share their perspectives on the transportation system in Cumberland County. Overall, they articulated the need for a more reliable, accessible, and efficient transportation system, both in Portland and throughout the county. Below is a sampling of comments from stakeholders on their experience with the transportation system:

- *“Transportation is a challenge; you can only go where the Metro goes and busses are not reliable. This restricts the market where people can search for housing and pushes people to stay in the metro area where costs are higher.”*
- *“Transportation outside the metro area is basically lacking.”*
- *“Opportunity to walk to store may not be there for everyone.”*
- *“The further you get from urban areas, the less services are available. It’s very hard to find transportation and childcare.”*
- *“There is no public transit really. It is so minimal and antiquated. It’s easy for policy makers to consider what we have quasi feasible to get to work, but it is impossible for someone to get to point a from b in a timely manner. [It feels like] transit is not designed to serve people.”*
- *“The immigrant population comes from places with more reliable public transit...the public transit system here leaves them more isolated.”*
- *“We need more bus shelters. The climate in Maine makes them necessary. Our transportation system is fractured, and the bus systems do not collaborate with each other. We need a Cumberland County Transit System. Maybe we could have less routes but make them for consistent and often.”*
- *“Places like Windham, there is land to build housing but no public transportation to get there. Lots of people building housing for seniors, it’s easier to get permits, but they’re totally missing the boat on housing for low-income families.”*
- *“We need working class housing with transportation. More people would move out further if they could get around in a better public transportation.”*

Primary mode of transportation. The resident survey found that nearly 90% of county respondents use a personal vehicle as their primary mode of transportation. This proportion of respondents was relatively similar across the majority of jurisdictions and was the number one mode of transportation used across all jurisdictions and demographic characteristics. The groups with the lowest proportion of those who primarily drive using a personal vehicle included:

- African American respondents (40%);
- Households making less than \$25,000 (53%);
- Single parent households (57%); and
- Precariously housed respondents²⁰ (57%).

The resident survey found that Hispanic and Other Race respondents, low income households (<\$25,000), and respondents in Scarborough and Windham were most likely to report that getting to public transit or the bus easily or safely was a challenge.

Access to transportation for people experiencing disabilities. Several stakeholders spoke to the limits on the transportation system, particularly accessibility. One stakeholder noted for people experiencing disabilities, “it is difficult to find a place to move that is within the range of paratransit.” Because the paratransit system only serves households within three quarters of a mile of the system, it limits housing options for those who rely on paratransit services. Additionally, one stakeholder felt that the access to paratransit throughout Portland is fair, but “the service is still limited.” They added that needing to schedule in advance is another barrier to utilizing it, noting that “accessing community on demand is difficult.”

Another stakeholder described that for people with disabilities, the lack of transportation outside of Portland is an impediment to their ability to move around the county. This stakeholder added that if you “...go out 10 miles, away from Portland, there are no sidewalks, no transportation lines, and nothing is accessible to get to. It’s extremely difficult for people with disabilities to get around and access to ancillary places is limited.” One stakeholder said that more recently, because of the limited nature of the transportation system, the “cost of gas to search for home in more affordable areas [has become] an issue.”

Additionally, several stakeholders spoke to the challenges for people experiencing disabilities when it came to using transportation during the winter season. The lack of snow removal on sidewalks is a major barrier for people experiencing disabilities to access transportation. As one stakeholder described, “...just because you have a bus that comes by your house does not mean you can get to it.” Another stakeholder recalled seeing people walk in traffic on a bridge because the “street plow comes and covers the sidewalk with slush.” Another stakeholder added that “in winter, it’s extremely difficult as a

²⁰ “Precariously housed” includes residents who are currently homeless or living in transitional or temporary/emergency housing, as well as residents who live with friends or family but are not themselves on the lease or property title. These residents may (or may not) make financial contributions to pay housing costs or contribute to the household in exchange for housing (e.g., childcare, healthcare services).

wheelchair user to depend on the clearing of sidewalks. This puts a greater demand on paratransit if sidewalks are not shoveled on fixed routes.”

One stakeholder noted that Greater Portland Metro has an “Adopt-a-Stop” program for bus stops because GP Metro does not shovel bus stops. This stakeholder added that “now there are bus shelters, which are mostly shoveled, but this is not the case everywhere.” Another stakeholder noted that it’s extremely difficult for people with disabilities to move their car during a snowstorm and are at higher risk of getting it towed. They suggested having a location for people with disabilities to keep their car for an extended period of time without the threat of having it towed.

One stakeholder had a broader comment about the frustration experienced by people with disabilities in trying to use the transportation system in greater Portland. They noted that “any friction people experience [using the system] will result in frustration and the result will be that they’re less likely to utilize [the system].” Another stakeholder advocated for adding visual and audible technology on buses to make them more accessible.

Transportation in proximity to housing, employment and other services.

Another issue stakeholders flagged with the transportation system was the proximity to services and location of housing. One stakeholder added that “even if you can find housing, it may not be close to services or transportation.” Another stakeholder added that if housing and transportation is not “co-mingled”, it’s difficult to access services, such as childcare or job training. One stakeholder noted that in South Portland, most, if not all, services are located in the eastern portion of the city. They felt that “pretty direct policy statements about established neighborhoods” have had an outsized influence on development patterns in the city, which has made it more difficult to co-locate housing and services.

Another stakeholder speaking about the bus system in South Portland articulated that “we don’t have the resources to make the bus system work for all.” This stakeholder added they do have high frequency bus service but it’s not located in great proximity to employment, adding that the “[the system] is so dispersed that people spend too much time on buses to get to jobs. It gets really complicated [for people taking the bus] with two or more jobs.”

One stakeholder who lives outside of the Portland area estimated that “99% of [their] community has cars.” They noted that even the local food pantry and community center is not on the public transportation line, adding we “haven’t developed walkable communities.” Another stakeholder noted that the largest employer in their town is located off the highway and therefore most workers drive to it. Demand for the bus route was deemed too low and the bus service was cancelled. The town is currently exploring other public transit options, including an on-demand system.

One stakeholder spoke to the inherent tension between where people want to live, where it’s convenient, and where it’s a “disadvantage” to live. This stakeholder noted that AFFH

requirements aim to deconcentrate poverty but for a lot of households, these areas are their communities and where services are located. Another stakeholder felt that moving services out of downtown was a veiled way to “push poor people out.” They added that “we have to fight it. It’s where transit is. They want to put people out in Riverton, but it’s more isolated and takes 45-60 minutes to get downtown. Apparently from analyzing census tracts, it looks like a better place to live.”

Other access to opportunity barriers. The resident survey also asked respondents to identify what would most improve their neighborhood and health situations. Below is a summary of the most common issues identified by different demographic groups.

Respondents most likely to say their neighborhood needs more sidewalks or needs to improve current sidewalks:

- Scarborough, 50%
- Households with a member experiencing a disability, 50%
- Asian, 47%
- Households making between \$50,000-\$99,999, 46%

Respondents most likely to say their neighborhood needs better street lighting:

- Households with a member experiencing a disability, 39%
- Windham, 34%
- South Portland, 32%

Respondents most likely to say they want easier ways to exercise:

- Hispanic, 53%
- African American, 45%
- Scarborough, 43%
- Households with a member experiencing a disability, 37%
- Single parents, 37%

Twenty nine percent of African American respondents articulated a need for more stores in their neighborhoods (grocery, pharmacy, etc.). Additionally, 33% of large households identified *more playgrounds for children*, 29% of Asian respondents identified *make it easier to get health clinics*, and 29% of precariously housed respondents identified *access to healthier foods* as solutions to help improve their health situations.

Access to Opportunity Outcomes

This final subsection summarizes how access to opportunity can affect lifetime outcomes—by sustaining employment, boosting earnings, and attaining homeownership.

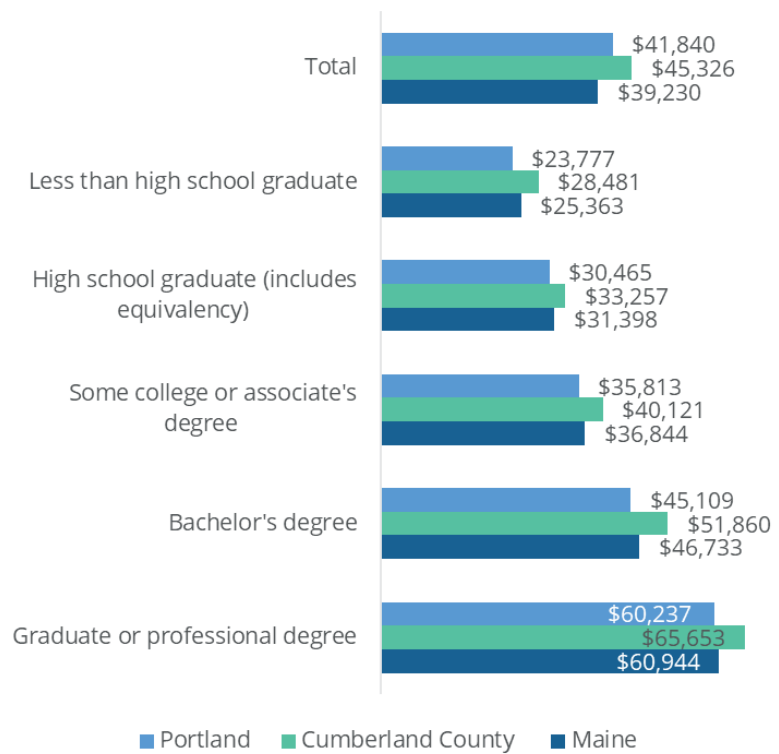
Household income and educational status. Gaps in college enrollment have stark financial consequences for students in the long-term. Figure V-27 illustrates median annual earnings by educational attainment. College degrees are especially important in Cumberland County: those with a bachelor’s degree in the county earn nearly 56% more than those with a high school diploma. This gap is wider in Cumberland County than in other parts of Maine. The differences between high-school graduate earnings and bachelor’s degree earnings are 48% in Portland and nearly 50% statewide.

Figure V-27.
Median Annual Earnings by Education, Portland, Cumberland County, and Maine, 2020

Notes: For population aged 25 and older.

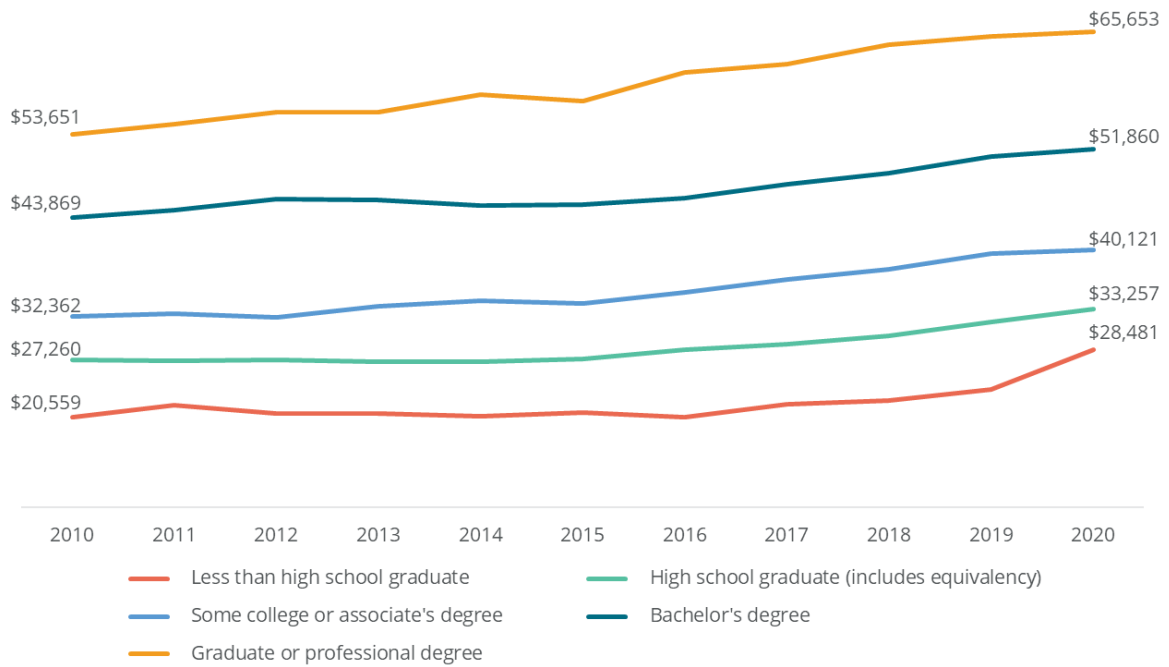
Source:

5-year 2020 ACS estimates and Root Policy Research.



As illustrated in Figure V-28, median earnings for high school graduates increased by 22% over the last decade (from \$27,260 to \$33,257). Earnings for college graduates also increased by 18% over the same period, but earnings for those with graduate degrees increased by 22%. Setting Cumberland County students up for success means ensuring they have a steady path to post-secondary education.

Figure V-28
Median Annual Earnings by Education, Cumberland County, 2010-2020



Note: For population aged 25 and older.

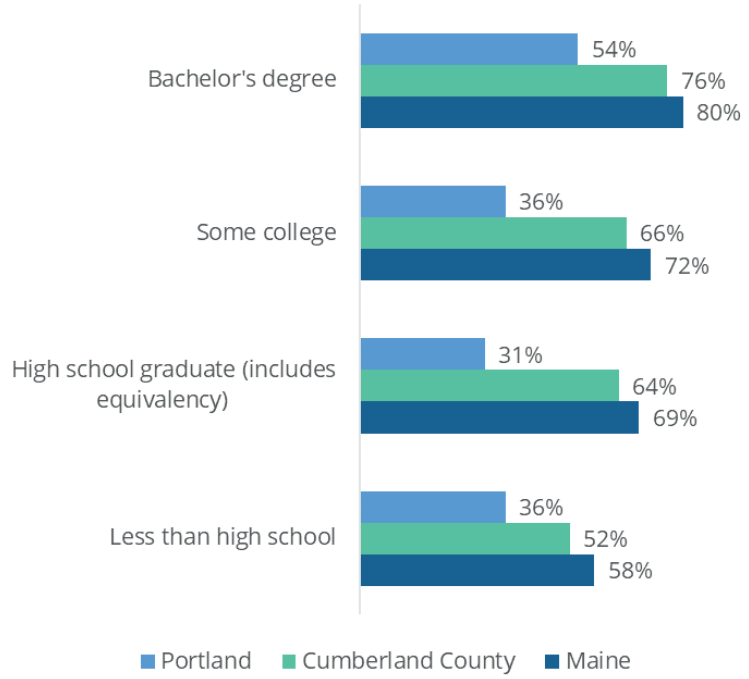
Source: 5-year 2020 ACS estimates and Root Policy Research.

Homeownership rates increase with levels of educational attainment, as shown in Figure V-29 below.

- In Cumberland County, as of 2020, 52% of those without a high school diploma own their homes. For the state overall, that rate is 58%. This difference among the county and state is the largest of all educational attainment groups, suggesting that workers with lower levels of educational attainment would find it harder to purchase in the county (relative to other parts of the state).
- In Portland, the homeownership rate is significantly lower for all groups without a college degree in Portland. Additionally, compared to the county and state, Portland residents with a college degree are much less likely to own their homes, suggesting that Portland residents, regardless of educational attainment, have a more difficult time purchasing a home compared to other parts of the county and state.

**Figure V-29.
Homeownership
Rates by
Educational
Attainment of
Householder,
Portland,
Cumberland
County, and Maine,
2020**

Source:
5-year 2020 ACS estimates and Root
Policy Research.



SECTION VI.

DISPROPORTIONATE HOUSING NEEDS

SECTION VI.

Disproportionate Housing Needs

The primary purpose of a disproportionate housing needs analysis is to identify how **affordable housing opportunities**, including the location of housing, differs for members of protected classes—and to determine if such differences are related to discriminatory actions or effects.

This section examines disproportionate housing needs. It includes data from Cumberland County and, when available, all 27 jurisdictions included in the Cumberland County HOME Consortium. To allow for a robust yet succinct analysis, each jurisdiction is included in their respective apportionment district as determined by the county.

The section covers:

- Housing unit growth, unit type diversity, vacancies, and second home use;
- Housing cost trends and the effects of rising costs on residents, including displacement and eviction and ability to utilize rental assistance;
- Where affordable housing is located and how this affects access to opportunity; and
- Who benefits from housing programs, including publicly supported housing, and how qualification criteria (credit history, criminal behavior, rental history/evictions) affect housing choice.

Geographic area of analysis. This section includes data from Cumberland County and all 27 jurisdictions included in the Cumberland County HOME Consortium that are eligible to receive housing and community development funds from the U.S. Department of Housing and Urban Development.

To allow for a robust yet succinct analysis, each jurisdiction is included in their respective apportionment district as determined by the County.

- District 1 includes Baldwin, Bridgton, Gorham, Scarborough, Sebago, and Standish, located in the western and southern portions of the county. The largest jurisdiction, Scarborough, has a population of 22,135.
- District 2 includes Casco, Falmouth, Gray, Harrison, Naples, New Gloucester, Raymond, and Windham, located in the northern and central portions of the county. The largest jurisdiction, Windham, has a population of 18,434.

- District 3 includes Brunswick, Chebeague Island, Cumberland, Freeport, Harpswell, Long Island, North Yarmouth, Pownal, and Yarmouth, located in the eastern portion of the county. The largest jurisdiction, Brunswick, has a population of 21,756.
- District 4 includes Cape Elizabeth, South Portland, and Westbrook, located in the southern portion of the county. The largest jurisdiction, South Portland, has a population of 26,498.
- District 5 encompasses the city of Portland, which is located in the southern portion of the county. The city has a population of 68,408.

Primary Findings

- Housing production in Cumberland County varied considerably among jurisdictions and districts. Local permit data shows that Portland (District 5) produced the most housing units of any singular jurisdiction in the county between 2010 and 2022, with nearly 5,000 units approved and over 2,000 certificates of occupancy issued over that time period.¹ According to ACS data, District 1 (made up of six jurisdictions) and District 2 (made up of eight jurisdictions) added an estimated 3,600 and 3,400 housing units between 2010 and 2020. The suburban communities of Scarborough and Westbrook each added a little more than 1,100 units over the same time period.
- Of the City of Portland’s units approved since 2010, about one quarter are designated to be affordable. Outside of the City of Portland, this newly developed housing was largely market rate and most affordable units are targeted for elderly residents. **Policies that favor affordable elderly housing over affordable family housing work to limit access to quality education for low income families.**
- During 2019, the county experienced a net loss of nearly 1,150 residents, with most residents moving to neighboring counties. **The out-migration of Cumberland County residents may be driven by rising housing costs.** A correlation analysis of median rents and out-migration suggests that rising costs affected migration patterns between 2011 to 2019. Many of the households moving to neighboring counties still commute to Cumberland County for work: 40% of the county’s workers in 2019 commuted from another county. Transportation times to and from work are also increasing: commuters’ time driving increased by 5% between 2010 and 2019.
- The housing market continues to be very tight, and challenging for low income households. Between 2010 and 2020, **the median rent increased by 37% in**

¹ ACS data estimates for the city of Portland reported low unit growth between 2010-2020, which did not take into account recent permitting and approval activity.

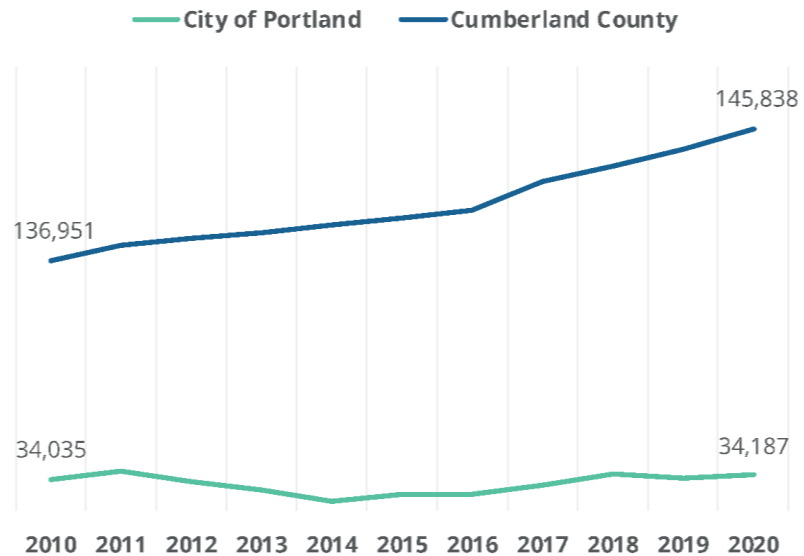
Cumberland County and 43% for the City of Portland—both much higher than the statewide increase of 23%. The **increase in home values has been more tame**, rising 16% in the county and 22% in Portland, compared to 12% in the state.

- **African American/Black households have extremely low homeownership rates**—11% in Portland and 19% in Cumberland County (compared to 25% in Maine). **All other racial and ethnic groups have homeownership rates that are more similar to the White homeownership rate.** To close other racial gaps in ownership, an estimated 164 Asian renters, 51 Native American renters, and 141 Hispanic renters would need to become owners. A much larger number—1,169 African American/Black renters—would need to become owners to close the White/Black homeownership gap.
- **Home loan denial rates were lowest among African American/Black and White Cumberland County applicants**, at 10% and 11% respectively. The very low denial rate among African American/Black applicants is unusual for U.S. cities, and is particularly notable given the extremely low homeownership rate among African American/Black households in the county and city.
- Geographically (Figure VI-37 maps), denial rates outside of the Portland – South Portland area were mostly driven by White applicants. African American/Black applicants, in particular, have a preference for buying in and near Westbrook, while Asian and Hispanic applicants seek ownership in slightly broader geographic areas. **White applicants appear less likely to be denied in many of the neighborhoods where applicants of color are focusing their homebuying efforts.**

Housing Supply

According to the American Community Survey, between 2010 and 2020, Cumberland County added nearly 9,000 housing units, for an increase of 6%. Housing unit growth in Cumberland County slightly outpaced the state's growth of 5%. As shown in Figure VI-1a, the county's housing stock has grown steadily since 2010, with an uptick in production beginning in 2016. However, these data do not fully capture permit and construction activity in recent years, which has been strong in the city of Portland, due to a lag in the ACS tracking.

Figure VI-1a.
Total Occupied and Vacant Housing Stock, Cumberland County and Portland, 2010 to 2020



Source:
2010 and 2020 5-year ACS data and
Root Policy Research.

Housing supply in Portland. While 5-year American Community Survey data shows that housing production in Portland increased by less than 1% over the decade, local City data² (Figure VI-1b) shows a marked increase in housing supply, particularly in the last few years. The difference is due to the lag in tracking from the Census: Five-year ACS data do not adequately capture the boost in units approved by the Planning Board and receiving Certificates of Occupancy.

Since 2010, the City of Portland's Planning Board has approved 4,535 housing units through site plan review, with nearly a quarter of those units designated as affordable (1,079 units). Of these, 2,285 have a Certificate of Occupancy.

With this activity, housing unit growth between 2010 and 2020 in Portland exceeds 7%.

² Local housing data tends to be timelier and more reflective of current conditions relative to national data, as well as have more recent and detailed data on housing production and the different mix of housing types being produced (or not produced). More information can be found at <https://localhousingsolutions.org/analyze/using-local-housing-data/>.

Figure VI-1b.
Housing Permit Data, City of Portland, 2010-2022

	2010-2014	2015-2019	2020-2022	Total
Units Approved by Planning Board	566	2,386	1,583	4,535
Market Rate Units	385	1,909	1,162	3,456
Affordable Units	181	477	421	1,079
Units With Certificate of Occupancy	566	1,650	69	2,285
Market Rate Units	385	1,300	52	1,737
Affordable Units	181	350	17	548

Note: Data in figure are current as of March 16, 2023.

Source: City of Portland Housing and Community Development Department.

Variance by jurisdiction. Housing unit growth varied considerably by jurisdiction, with a handful of cities and towns responsible for more than half of the county’s total growth, according to the ACS. By jurisdiction and District,³

- The largest percentage increases in housing production occurred in Casco (with an increase in housing units of 29%), the tourist area of Chebeague Island (24%), Bridgton (22%), and Naples (22%).
- Four jurisdictions showed a decline in total housing units: Long Island (a 20% decline), Pownal (-8%), Brunswick (-5%), and New Gloucester (-1%). Brunswick lost the most units overall between 2010 and 2020 (455 units), followed by Long Island (100 units) and Pownal (54 units).
- The suburban communities of Scarborough and Westbrook each added a little more than 1,100 units. These two areas alone accounted for 26% of the ACS’s measured housing production in the county between 2010 and 2020. By comparison, these two cities represent 13% of the county’s housing stock.
- Between 2010 and 2020, Portland produced more housing than measured by the ACS in any other community in the county, with certificates of occupancy issued to nearly 2,300 units, the vast majority in a multi-family setting. Over the same time period, Portland issued certificates of occupancy for over 500 affordable units.

³ Unit counts are based on 5-year American Community Survey (ACS) estimates, which was the most recent data source available for small jurisdictions. The 5-year ACS was used for all jurisdictions to maintain consistency.

Figures VI-2 through VI-6 show housing unit estimates for 2010 and 2020, the percent change in units, and the percent of the stock that is single family detached homes.

Unit type. Single family homes make up 66% of Cumberland County’s housing stock overall. Attached homes—including du/tri/fourplexes and townhomes—make up another 17%. Small (5-19 unit) multifamily units make up 6.8%, about the same as larger multifamily units (6.4%) and mobile homes comprise 4% of the county’s housing stock.

Variance by jurisdiction. Housing unit composition ranges widely among Districts and jurisdictions:

- In rural jurisdictions, single family detached homes dominate the housing stock, typically comprising 85% or more of housing units. The exceptions are in Casco, New Gloucester, Brunswick (home of Bowdoin college), Freeport, and Yarmouth where single family homes make up less than 80% of total housing units.
- The suburban communities of Scarborough and Westbrook—with the fastest growth in housing units—differ widely in their housing stock composition. Scarborough’s housing stock is 75% single family detached while Westbrook’s is 49%. South Portland’s stock is 59% single family detached.
- Per the ACS, in Portland, single family homes make up the minority—37%—of all housing unit types.

**Figure VI-2.
Total Housing
Stock, by
Jurisdiction in
District 1, 2010
and 2020**

Source:
2020 ACS 5-year
estimates.

	2010 Housing Stock	2020 Housing Stock	Percent Change	Percent Single-Family Home
District 1	24,148	27,539	14%	81%
Baldwin	660	712	8%	82%
Bridgton	3,917	4,781	22%	82%
Gorham	5,470	6,234	14%	79%
Scarborough	8,406	9,598	14%	75%
Sebago	1,340	1,511	13%	85%
Standish	4,355	4,703	8%	89%
Cumberland County	136,951	145,838	6%	66%

**Figure VI-3.
Total Housing
Stock, by
Jurisdiction in
District 2, 2010
and 2020**

Source:
2020 ACS 5-year
estimates.

	2010 Housing Stock	2020 Housing Stock	Percent Change	Percent Single-Family Home
District 2	27,843	31,466	13%	84%
Casco	2,521	3,240	29%	71%
Falmouth	4,611	5,081	10%	82%
Gray	3,752	4,377	17%	81%
Harrison	1,910	2,128	11%	89%
Naples	2,896	3,521	22%	80%
New Gloucester	2,261	2,238	-1%	77%
Raymond	2,839	3,006	6%	97%
Windham	7,053	7,875	12%	88%
Cumberland County	136,951	145,838	6%	66%

**Figure VI-4.
Total Housing
Stock, by
Jurisdiction in
District 3, 2010
and 2020**

Source:
2020 ACS 5-year
estimates.

	2010 Housing Stock	2020 Housing Stock	Percent Change	Percent Single-Family Home
District 3	24,619	25,154	2%	72%
Brunswick	9,451	8,996	-5%	54%
Chebeague Island	472	584	24%	98%
Cumberland	2,855	2,999	5%	82%
Freeport	3,773	4,165	10%	73%
Harpswell	4,213	4,383	4%	89%
Long Island	493	393	-20%	94%
North Yarmouth	1,367	1,522	11%	92%
Pownal	655	601	-8%	88%
Yarmouth	1,340	1,511	13%	68%
Cumberland County	136,951	145,838	6%	66%

**Figure VI-5.
Total Housing
Stock, by
Jurisdiction in
District 4, 2010
and 2020**

Source:
2020 ACS 5-year
estimates.

	2010 Housing Stock	2020 Housing Stock	Percent Change	Percent Single-Family Home
District 4	23,449	24,960	6%	60%
Cape Elizabeth	4,027	4,063	1%	90%
South Portland	11,549	11,869	3%	59%
Westbrook	7,873	9,028	15%	49%
Cumberland County	136,951	145,838	6%	66%

**Figure VI-6.
Total Housing
Stock, by
Jurisdiction in
District 5, 2010
and 2020**

	2010 Housing Stock	2020 Housing Stock	Percent Change	Percent Single-Family Home
District 5 - Portland	34,035	36,320	7%	37%
Cumberland County	136,951	145,838	6%	66%

Source:

City of Portland Housing and Community Development Department and 2020 ACS 5-year estimates.

Second homes and in-migration. Cumberland County has an estimated 145,838 total housing units. Of those, 15,216, or 10% are being used for seasonal or recreational use, a slight increase from 2010. By comparison, units that are for rent or for sale make up 2% of total housing units—an incredibly low vacancy rate. A vacancy rate of at least 5% is needed to ensure a housing market that can adequately respond to household demand.

Units that are vacant because of seasonal, recreational, or vacation use account for 68% of *all vacant units*. The next most common purpose for vacancy was “other”—meaning that the reason for vacancy is unknown. Units for rent made up 9% of all vacant units. Units for sale made up 4% of all vacant units.

As shown by the figure below, the county’s proportion of seasonal, recreational, or vacation use units had been on a consistently upward trend until 2020, when the number of units declined—perhaps due to a conversion of some units into permanent occupancy (by retirees, remote workers, etc.).

**Figure VI-7.
Housing Units
Vacant for
Seasonal or
Recreational Use,
Cumberland
County, 2010 to
2020**

Source:
5-year ACS data and Root Policy
Research.

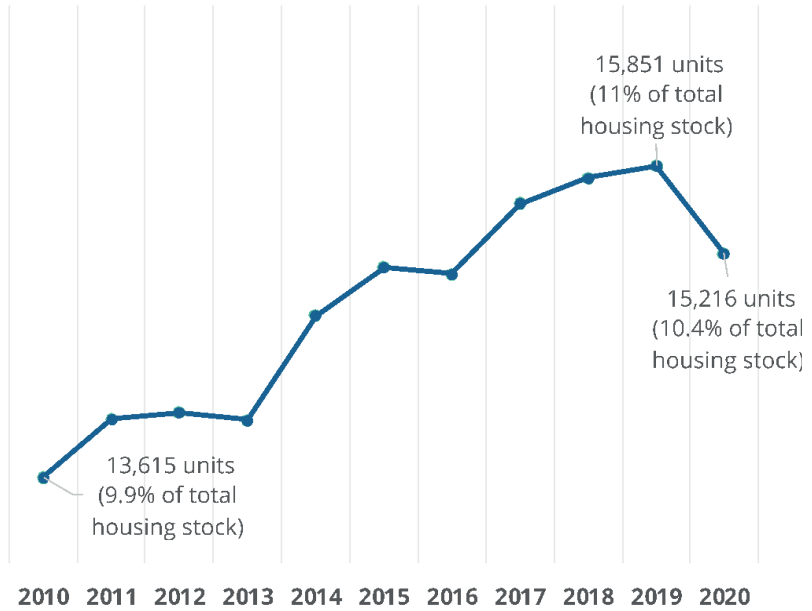
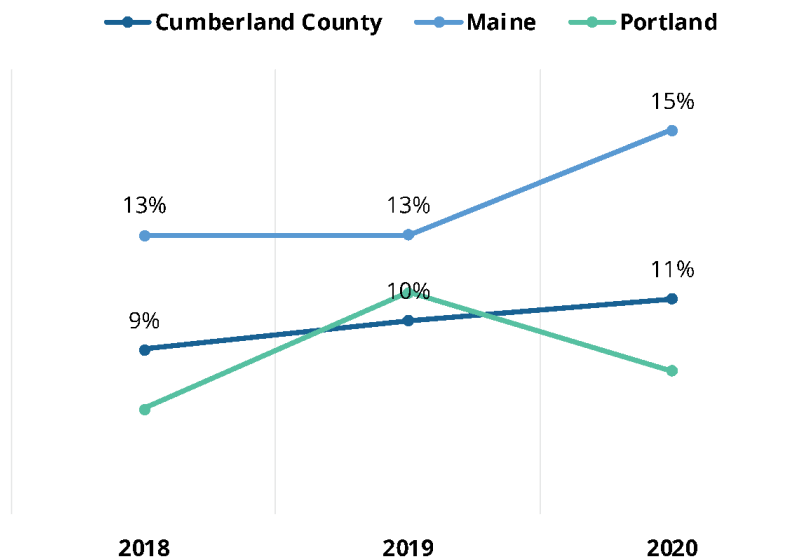


Figure VI-8 shows recent trends in home loans that were made for second homes as captured in the Home Mortgage Disclosure Act (HMDA) data. These data underestimate second home acquisition trends, as they exclude purchases made in cash. Still, the data are useful to track a subset of acquisition trends.

In both the state and Cumberland County, mortgage loans for second homeownership have increased since 2018, albeit slightly.

**Figure VI-8.
Mortgage Loans
for Second Homes,
Cumberland
County and Maine,
2018 to 2020**

Source:
HMDA and Root Policy Research.



A handful of jurisdictions—mostly those with resort areas—are responsible for the bulk of the county’s units in seasonal and recreational use. Portland, by contrast, has relatively few seasonal and recreational use units: the city’s seasonal and recreational use units comprise less than 10% of the county’s seasonal and recreational use units—compared to 23% of all of the county’s housing units.

Variance by jurisdiction. By jurisdiction and District,

- Five jurisdictions have 40% or higher of their entire housing stock dedicated to seasonal rentals: Bridgton (40%), Sebago (41%), Naples (41%), Chebeague Island (50%), and Long Island (65%).
- Jurisdictions with the lowest proportion of their housing units as seasonal or recreational include Gorham (0%), Falmouth (3%), Brunswick (3%), Cumberland (0%), North Yarmouth (0%), Pownal (1%), Yarmouth (2%), South Portland (1%), Westbrook (0%), and Portland (4%).

Figure VI-9.
Reason for Vacancies, by Jurisdiction in District 1, 2020

	Total Housing Units	Vacant Units		Seasonal/Recreational Vacancies	
		Number	% of Total	Number	% of Total
District 1	27,539	5,649	21%	4,365	16%
Baldwin	712	172	24%	115	16%
Bridgton	4,781	2,302	48%	1,911	40%
Gorham	6,234	176	3%	-	0%
Scarborough	9,598	1,136	12%	795	8%
Sebago	1,511	711	47%	619	41%
Standish	4,703	1,152	24%	925	20%
Cumberland County	145,838	22,454	15%	15,216	10%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-10.
Reason for Vacancies, by Jurisdiction in District 2, 2020

	Total Housing Units	Vacant Units		Seasonal/Recreational Vacancies	
		Number	% of Total	Number	% of Total
District 2	31,466	6,810	22%	5,692	18%
Casco	3,240	1,327	41%	1,189	37%
Falmouth	5,081	295	6%	160	3%
Gray	4,377	720	16%	622	14%
Harrison	2,128	727	34%	655	31%
Naples	3,521	1,560	44%	1,428	41%
New Gloucester	2,238	197	9%	88	4%
Raymond	3,006	1,098	37%	993	33%
Windham	7,875	886	11%	557	7%
Cumberland County	145,838	22,454	15%	15,216	10%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-11.
Reason for Vacancies, by Jurisdiction in District 3, 2020

	Total Housing Units	Vacant Units		Seasonal/Recreational Vacancies	
		Number	% of Total	Number	% of Total
District 3	27,113	4,472	16%	2,769	10%
Brunswick	8,996	701	8%	300	3%
Chebeague Island	584	308	53%	291	50%
Cumberland	2,999	79	3%	-	0%
Freeport	4,165	750	18%	364	9%
Harpwell	4,383	2,001	46%	1,469	34%
Long Island	393	276	70%	254	65%
North Yarmouth	1,522	95	6%	-	0%
Pownal	601	39	6%	9	1%
Yarmouth	3,470	223	6%	82	2%
Cumberland County	145,838	22,454	15%	15,216	10%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-12.
Reason for Vacancies, by Jurisdiction in District 4, 2020

	Total Housing Units	Vacant Units		Seasonal/Recreational Vacancies	
		Number	% of Total	Number	% of Total
District 4	24,960	1,578	6%	346	1%
Cape Elizabeth	4,063	309	8%	166	4%
South Portland	11,869	627	5%	146	1%
Westbrook	9,028	642	7%	34	0%
Cumberland County	145,838	22,454	15%	15,216	10%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-13.
Reason for Vacancies, by Jurisdiction in District 5, 2020

	Total Housing Units	Vacant Units		Seasonal/Recreational Vacancies	
		Number	% of Total	Number	% of Total
District 5 - Portland	34,187	3,391	10%	1,498	4%
Cumberland County	145,838	22,454	15%	15,216	10%

Source: 2020 5-year ACS data and Root Policy Research.

Housing Costs

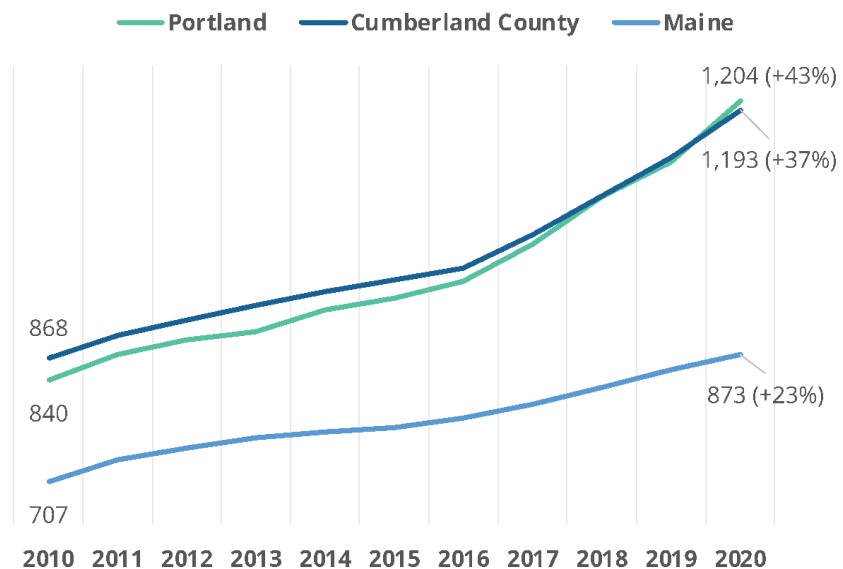
Rent costs. In 2010, the median rent in Cumberland County was \$868 per month, and the statewide median was \$707 per month. By 2020, Cumberland County's median rent had grown to \$1,193—a 37% increase. Rents statewide increased to \$873—a 23% increase.

The faster increase in the county's rent widened the price differential between the county and the state. As of 2020, the median rent in the county was 37% higher than the statewide rent.

The median rent in the City of Portland was \$840 per month in 2010, slightly less than the county median. By 2020, the City's median surpassed that of the county, reaching \$1,204 per month. This increase in median rents of 43% was higher than the county's and nearly twice that of the state.

Figure VI-14.
Median Rent,
Portland,
Cumberland
County, and
Maine, 2010 to
2020

Source:
5-year ACS data and Root Policy
Research.

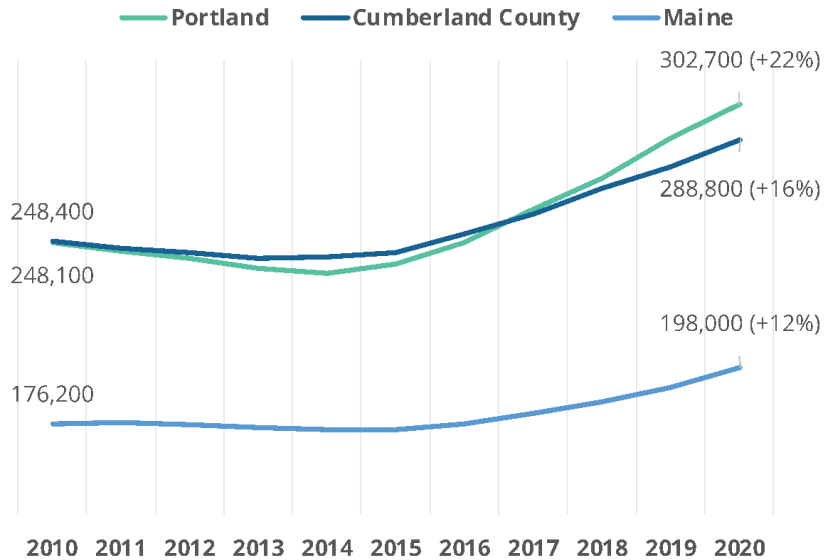


Home values. Growth in home values in Cumberland County outpaced the state overall, though less drastically than rent increases. The median home value rose 16% in the county between 2010 and 2020 (from \$248,400 to \$288,800), compared to 12% for the state overall.

The rise in the county's and state's home values was less than half of the increase in median rent between 2010 and 2020 (rents increased by 37% for the county and 23% for the state). Portland's home values increased from \$248,100 in 2010 to \$302,700 in 2020—a 22% increase. This was much higher than the county increase and, like the increase in rents, nearly twice that of the state increase.

**Figure VI-15.
Median Home
Values, Portland,
Cumberland
County, and
Maine, 2010 to
2020**

Source:
5-year ACS data and Root
Policy Research.



Variance by jurisdiction. The jurisdictions with the most relevant changes in gross rent between 2010 and 2020 were:

- Long Island’s rent increased the most, by 126% (from \$725 to \$1,639).
- The next largest increase was in Naples and Freeport at 83% and 61%, respectively.
- Nine jurisdictions experienced increases above the 37% increase in Cumberland County.
- A number of jurisdictions experienced much smaller increases in median rent over the decade with Harrison (1%), Harpswell (2%), and Cumberland (4%) all seeing minor but positive growth.
- Three jurisdictions had gross rent values that declined during the period: Cape Elizabeth (-2%), Baldwin (-18%), and Casco (-18%). Notably, all three of the jurisdictions with declining rents had positive housing price increases, with Cape Elizabeth’s median home value increasing 29% between 2010 and 2020.

The jurisdictions with the most relevant changes in self-reported median home values between 2010 and 2020 were:

- Chebeague Island’s home values experienced a very strong increase of 151%, from \$175,000 to \$439,800;
- The next largest increases were in Pownal (30%) and Cape Elizabeth (29%);
- Ten jurisdictions experienced increases above the 16% increase in Cumberland County;
- Three jurisdictions had median home values that declined during the period: Sebago (-11%), Naples (-19%), and Raymond (-2%); and

- Uniquely, Naples experienced the second highest rental increases (+83%), while the home values declined the most (-19%), suggesting a shift from homeowners to renters.

Figure VI-16.
Median Rent and Home Values, by Jurisdictions in District 1, 2020

	Median Rent		Median Home Value	
	Median Rent in 2020	% Change from 2010	Median Home Value in 2020	% Change from 2010
District 1				
Baldwin	\$ 913	-18%	\$ 187,100	13%
Bridgton	\$ 806	24%	\$ 177,800	4%
Gorham	\$ 1,184	46%	\$ 287,100	18%
Scarborough	\$ 1,399	28%	\$ 376,100	18%
Sebago	\$ 881	19%	\$ 173,900	-11%
Standish	\$ 975	10%	\$ 235,000	10%
Cumberland County	\$ 1,193	37%	\$ 288,800	16%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-17.
Median Rent and Home Values, by Jurisdictions in District 2, 2020

	Median Rent		Median Home Value	
	Median Rent in 2020	% Change from 2010	Median Home Value in 2020	% Change from 2010
District 2				
Casco	\$ 780	-18%	\$ 210,000	6%
Falmouth	\$ 1,581	49%	\$ 463,000	20%
Gray	\$ 1,140	28%	\$ 258,100	22%
Harrison	\$ 889	1%	\$ 177,200	8%
Naples	\$ 1,506	83%	\$ 201,400	-19%
New Gloucester	\$ 999	36%	\$ 253,500	8%
Raymond	\$ 1,189	24%	\$ 263,600	-2%
Windham	\$ 1,144	23%	\$ 255,100	11%
Cumberland County	\$ 1,193	37%	\$ 288,800	16%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-18.
Median Rent and Home Values, by Jurisdictions in District 3, 2020

	Median Rent		Median Home Value	
	Median Rent in 2020	% Change from 2010	Median Home Value in 2020	% Change from 2010
District 3				
Brunswick	\$ 1,082	39%	\$ 255,000	19%
Chebeague Island	\$ 1,625	n/a	\$ 439,800	151%
Cumberland	\$ 1,200	4%	\$ 377,800	7%
Freeport	\$ 1,358	61%	\$ 330,500	9%
Harpswell	\$ 1,089	2%	\$ 388,100	8%
Long Island	\$ 1,639	126%	\$ 364,000	9%
North Yarmouth	\$ 1,233	21%	\$ 358,600	4%
Pownal	\$ 1,146	16%	\$ 312,500	30%
Yarmouth	\$ 1,367	46%	\$ 386,500	7%
Cumberland County	\$ 1,193	37%	\$ 288,800	16%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-19.
Median Rent and Home Values, by Jurisdictions in District 4, 2020

	Median Rent		Median Home Value	
	Median Rent in 2020	% Change from 2010	Median Home Value in 2020	% Change from 2010
District 4				
Cape Elizabeth	\$ 1,151	-2%	\$ 469,600	29%
South Portland	\$ 1,346	50%	\$ 276,100	22%
Westbrook	\$ 1,076	29%	\$ 240,800	12%
Cumberland County	\$ 1,193	37%	\$ 288,800	16%

Source: 2020 5-year ACS data and Root Policy Research.

Figure VI-20.
Median Rent and Home Values, by Jurisdictions in District 5, 2020

	Median Rent		Median Home Value	
	Median Rent in 2020	% Change from 2010	Median Home Value in 2020	% Change from 2010
District 5 - Portland	\$ 1,204	43%	\$ 302,700	22%
Cumberland County	\$ 1,193	37%	\$ 288,800	16%

Source: 2020 5-year ACS data and Root Policy Research.

In-migration and the Effect on Housing Costs

Regional migration patterns. In 2019, Cumberland County had negative net migration of -1,145, meaning more people left the county than moved into the county. Most individuals who left Cumberland County in 2019 moved to another county in Maine, mostly neighboring counties, like York (-714) and Androscoggin (-537) Counties, followed by Penobscot County (-289). Among those *moving into Cumberland County* from other Maine counties, most moved from neighboring Oxford County (148), followed by Aroostook (128) and Hancock (108) Counties. Figure VI-21 shows the counties into which Cumberland County residents migrated (negative numbers), and the counties from which new Cumberland County residents came (positive numbers).

Figure VI-21.
Cumberland County
In- and Out-
migration, 2019

Source: 2019 5-year ACS estimates
and Root Policy Research.

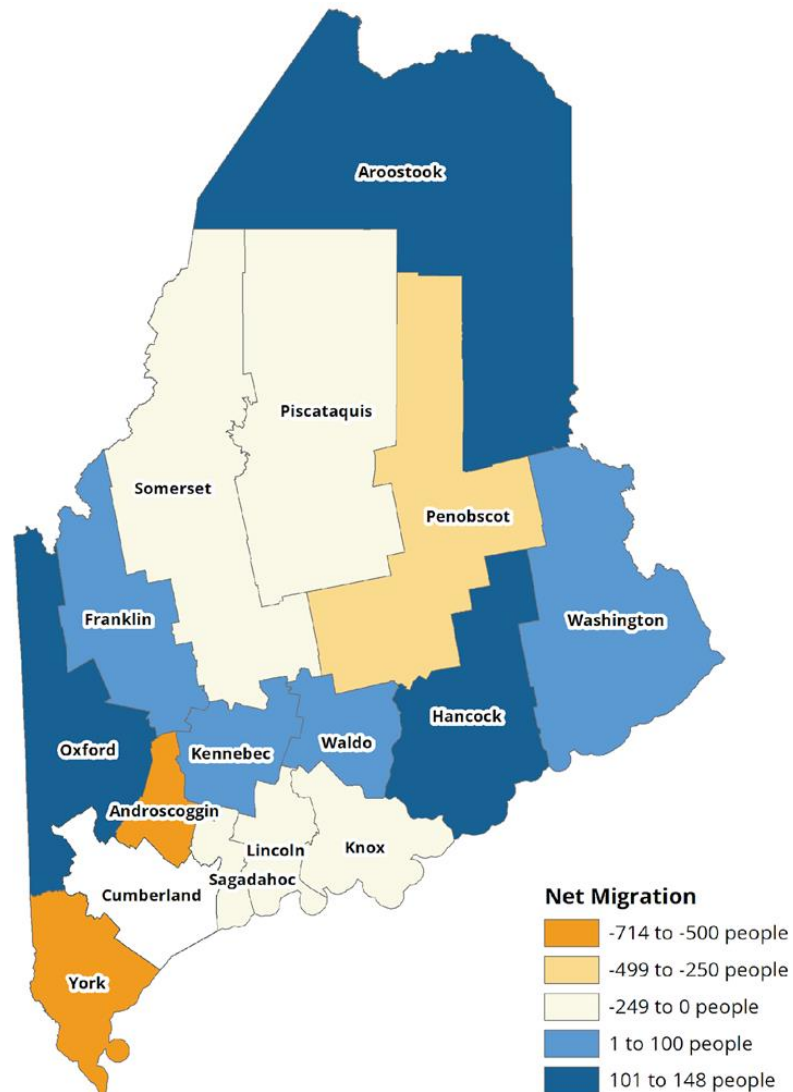
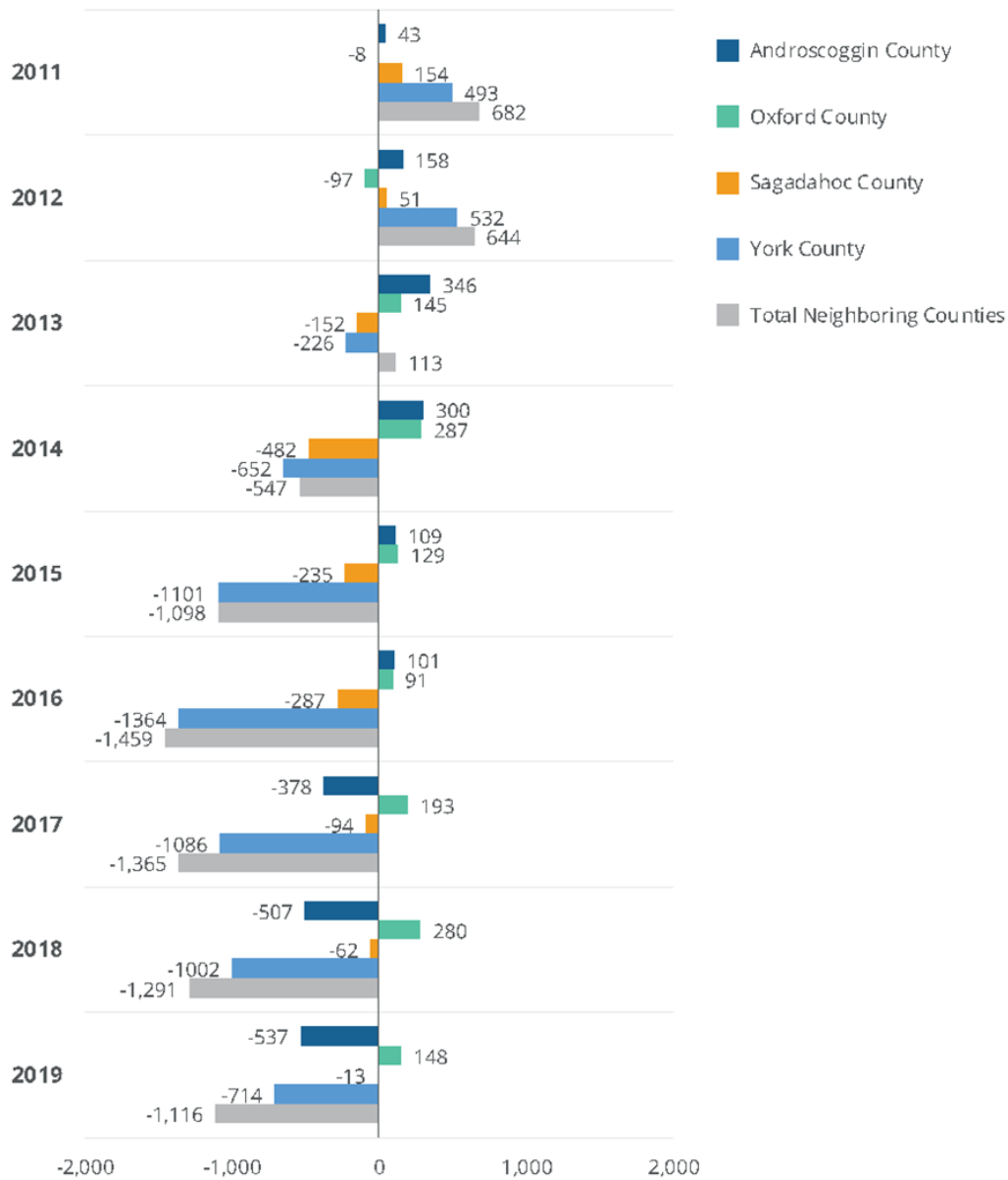


Figure VI-22 illustrates the trends in net migration into and out of Cumberland County from neighboring counties. There has been increasing overall net out-migration from Cumberland to neighboring counties, largely driven by individuals moving from Cumberland to York and Androscoggin counties. On net in 2019, Cumberland County lost 1,116 residents to neighboring counties. This is a 264% decrease from 2011, when Cumberland County gained 682 residents from these neighboring counties, on net.

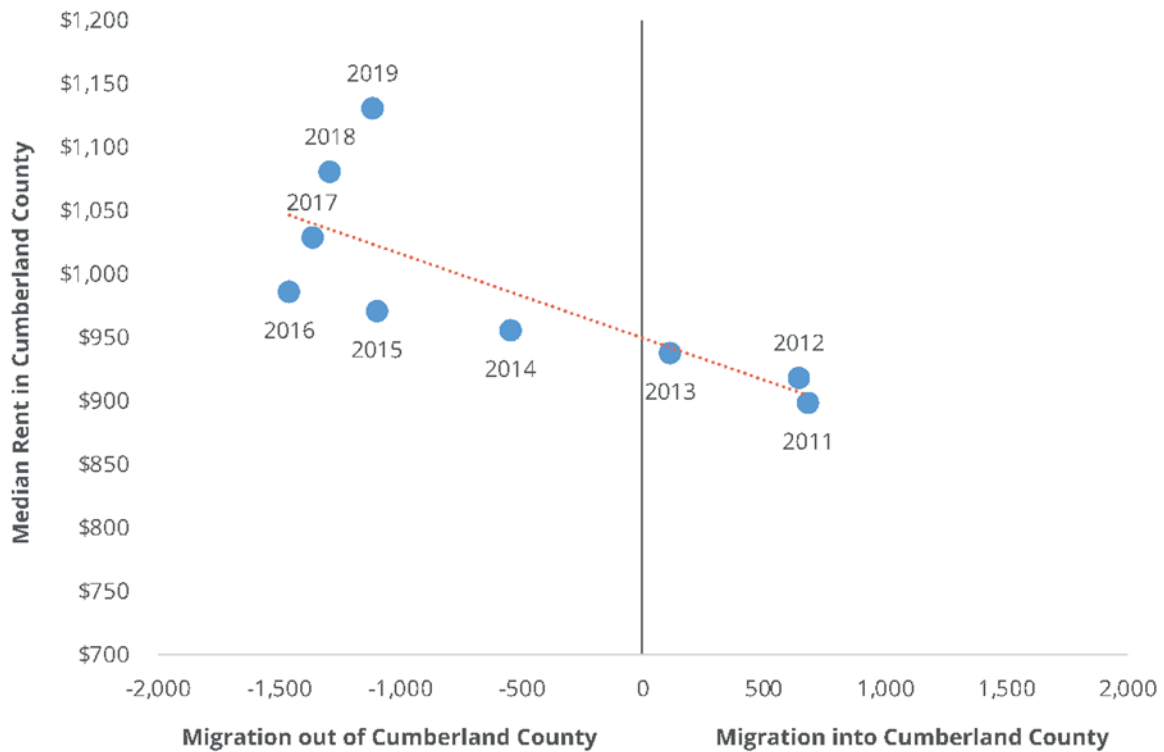
Figure VI-22.
Net Migration in Cumberland County to/from Neighboring Counties, 2011 to 2019



Source: 2019 5-year ACS estimates and Root Policy Research.

Effect of housing costs. The net out-migration of Cumberland County residents to neighboring counties may be driven by rising housing costs. Statistical correlation measures can help determine the relationship between migration and housing costs. Figure VI-23 plots the relationship between median gross rent and the number of net out-migrants to neighboring counties annually from 2011 to 2019. This relationship has a statistically significant correlation coefficient of -0.75, meaning that as rent increases, the county loses more residents to neighboring counties.⁴ However, it is important to note that these are merely correlations and do not provide causal evidence. In other words, these data do not show that rent increases cause out-migration, simply that the two are associated.

Figure VI-23.
Correlation between Median Rent and Migration out of Cumberland County, 2011-2019



Source: 2019 5-year ACS estimates and Root Policy Research.

Many of the households moving to neighboring counties still commute to Cumberland County for work: 40% of the county's workers in 2019 commuted from another county.

⁴ Statistically significant at the 0.01% level according to Pearson's correlation test.

This means transportation times are also increasing: time spent traveling to work has increased by 5% since 2010, from 21.9 minutes to 23.1 minutes on average.

Interstate migration. In 2019, there were -1,055 net migrants leaving Cumberland County for states other than Maine. Individuals leaving Cumberland County for another state in 2019 were most likely to go to Florida (-540), New Hampshire (-222), North Carolina (-150), and Washington (-158). Those moving into Cumberland County from another state in 2019 were most likely to be coming from Massachusetts (390), Connecticut (334), Michigan (175), and New York (148).

Disproportionate Housing Needs

In housing market studies, housing needs are typically measured by:

- Cost burden (defined below);
- The cost of housing (rents, purchase prices), typically relative to household income;
- Challenges managing rising housing costs, including displacement and eviction; and
- Homeownership attainment.

Disproportionate needs are evident when the above indicators differ by protected class. This section examines those differences.

Cost burden. Households vary considerably in their ability to manage rising housing costs and cost increases can be particularly difficult for households with stagnant incomes, job losses, and other large expenses such as childcare and health care. One way to examine how well households can manage rising costs is through trends in cost burden.

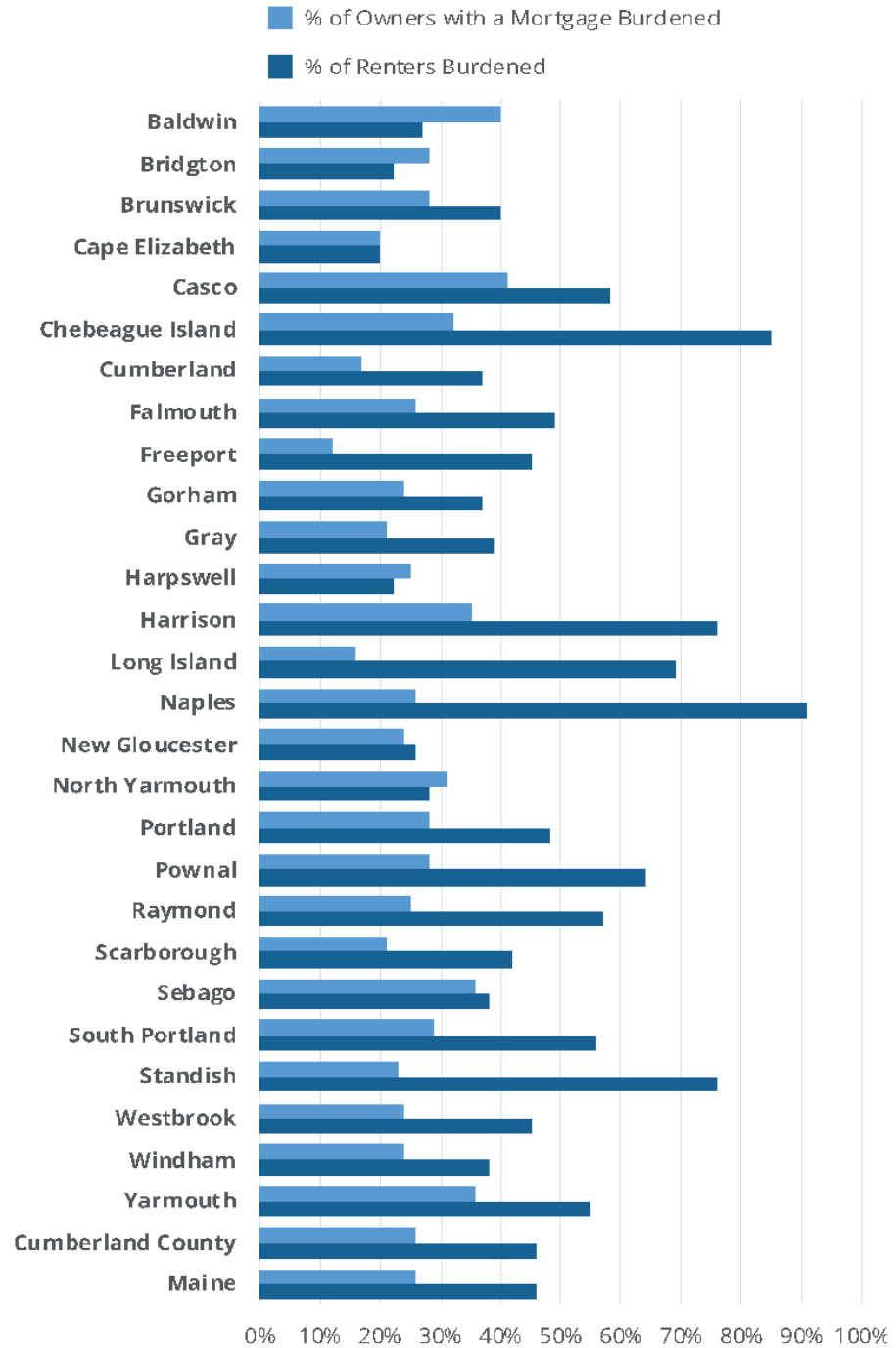
Cost burden exists when households pay more than 30% of their gross household income in housing costs. Housing costs include the rent or mortgage payment, utilities, renter or homeowner insurance, and property taxes. When households are severely cost burdened—paying 50% and more of their incomes in housing costs—they may have trouble keeping up with medications/health care, affording food, and may be at risk of eviction, foreclosure, and homelessness.



Disparities in cost burden. As demonstrated in Figure VI-24, cost burden varies significantly by tenure and among jurisdictions. Renters experience cost burden at much higher levels than do owners. In some jurisdictions—namely Harrison, Long Island, Naples, and Standish—three quarters to nearly all renters are cost burdened. Both renter and owner burden are lowest in Cape Elizabeth.

Figure VI-24.
Cost Burden by
Jurisdiction
and compared
to Maine, 2020

Source:
 5-year ACS data and Root
 Policy Research.

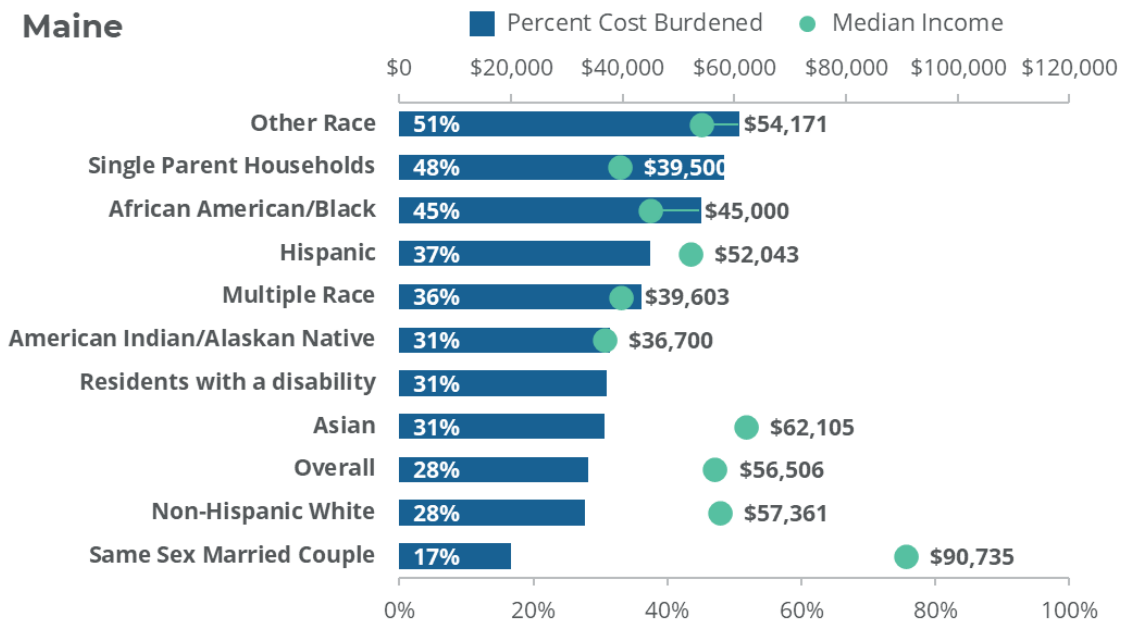


Higher levels of cost burden among renters has a disproportionate impact on resident groups who are more likely to rent, including African American/Black residents, single parents, and non-elderly residents with a disability.

Figure VI-25 shows difference in cost burden by household characteristics and median income. The relationship between cost burden and household income is not as linear as would be expected.

In Maine, some household types with the lowest median incomes are more likely than households overall to be burdened, namely single parent households and multiple race households. But Other Race, African American/Black, and Hispanic households have moderate income levels and some of the highest rates of burden. In Greater Portland (Figure VI-26), Multiple Race and Other households face very high rates of burden while earning moderate incomes. This could suggest that discrimination in the housing market is limiting their housing choices, forcing them into disproportionately higher priced units.

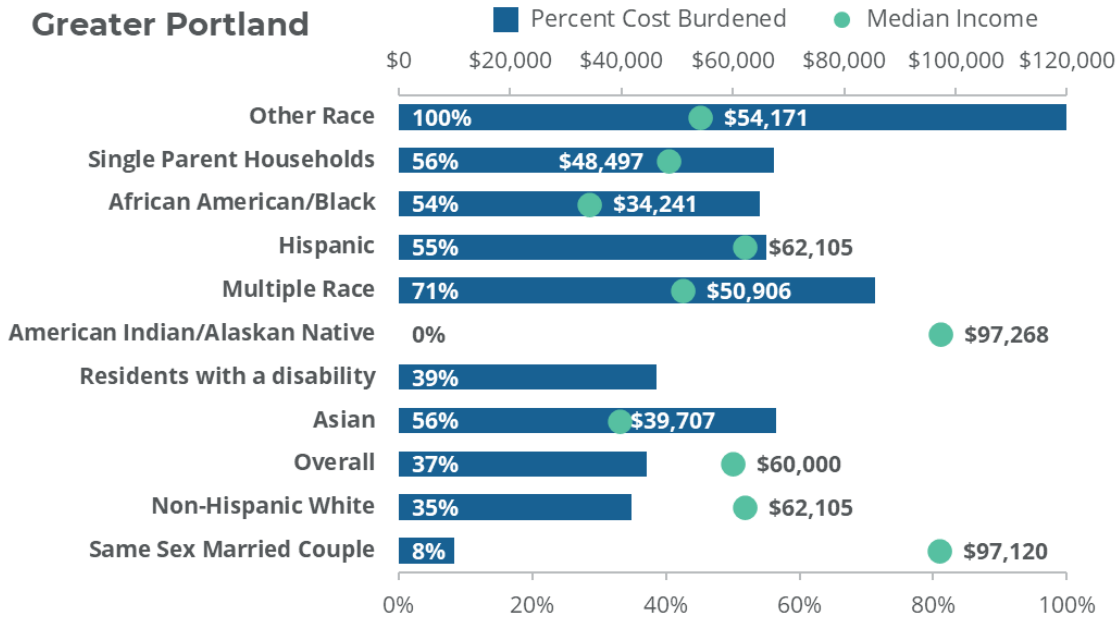
Figure VI-25.
Cost Burden and Median Household Income by Household Characteristic, Maine 2019



Note: Greater Portland uses data for PUMA 23 01000, for maps see: https://www2.census.gov/geo/maps/dc10map/PUMA_RefMap/st23_me/puma2301000/DC10PUMA2301000_001.pdf

Source: IPUMS, 2019 5-year ACS, and Root Policy Research.

Figure VI-26.
Cost Burden and Median Household Income by Household Characteristic,
Greater Portland, 2019



Note: Greater Portland uses data for PUMA 23 01000, for maps see: https://www2.census.gov/geo/maps/dc10map/PUMA_RefMap/st23_me/puma2301000/DC10PUMA2301000_001.pdf

Source: IPUMS, 2019 5-year ACS, and Root Policy Research.

Managing the rising cost of housing. As housing affordability has become a growing concern in many communities, the gap between housing costs and wages has been more frequently studied. In most communities in the U.S., housing costs have risen at a faster rate than household incomes, requiring households to dedicate more of their monthly income to housing costs. This becomes a public policy concern for many reasons:

- Households become increasingly cost burdened and are at risk of eviction and homelessness;
- Households have less disposable income to spend on local goods and services, which has a negative impact on local sales tax revenue;
- Households have less disposable income to spend on larger goods (vehicles, electronics, household appliances), which negatively impacts the U.S. economy; and
- Most importantly, households are less likely to invest in education, which has long term consequences for furthering economic growth and development.

On the positive side, homeowners who have occupied their homes for a significant period of time can benefit economically from rising home prices, assuming they can afford to move. Longer term, however, if wages remain stagnant, they may have difficulty selling their homes at their desired price due to a smaller supply of eligible buyers.

Displacement. The impact of rising housing costs can affect households differently, and this is evident in the Portland region in displacement data gathered through the resident survey conducted for this study.

Overall, 19% of survey respondents experienced displacement in the past five years. By resident type:

- Single parent reported the highest rate of displacement among all groups (41%).
- Among respondents by race/ethnicity, Other Race and African American respondents reported the highest rates of displacement (31% and 26%, respectively).

Eviction. According to 2016 data from the Princeton University Eviction Lab, Cumberland County's eviction rate was 1.33%, which was lower than the statewide and national eviction rate (both at 2.3%). Cumberland County also had a lower eviction rate than neighboring counties, including York (2.3%), Oxford (2.4%), Androscoggin (4%), and Sagadahoc (4%) counties. However, according to April 2022 Census Pulse data,

- 43% of Maine renters reported a "very likely" chance of eviction or foreclosure;
- 73% said it was at least "somewhat likely" they would be forced to leave their home; and
- 81% of parenting households believe it is at least "somewhat likely" they will have to leave their current home.

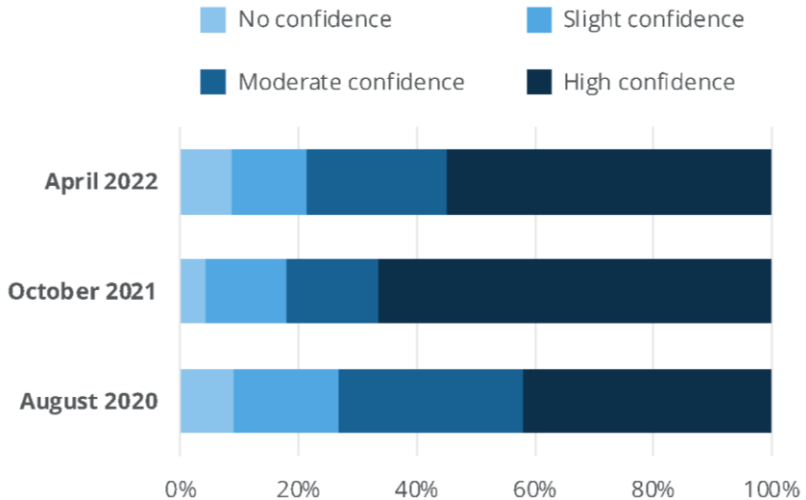
The resident survey conducted to support this study found similar concerns about being evicted regardless of race and ethnicity.

Pandemic effect. COVID has significantly affected the ability to pay rent for many Americans. The Census Bureau's "Pulse Survey," which was fielded during the pandemic, provides monthly confidence ratings for multiple cost of living standards. Data are available for Maine residents overall.

- In April 2022, the share of renter households in Maine who indicated that they had only slight confidence or no confidence in their ability to pay next month's rent was 20%, down from 25% earlier in the pandemic.
- The rate of no or slight confidence was worse among renter households with children (30%).

Figure VI-27.
Confidence in
Ability to Pay next
month's Rent,
Maine, 2020 - 2022

Source:
 Census PULSE data and Root
 Policy Research.



Attaining homeownership. This section illustrates differences in homeownership rates by race and ethnicity for Cumberland County. It also investigates differences in homeownership opportunities, namely mortgage denial rates and high-cost loan rates. The section begins with an overview of ownership trends—and barriers to ownership and wealth-building—in the U.S. overall.

For the majority of households in the U.S., owning a home is the single most important factor in wealth-building. Homeownership is also thought to have broader public benefits, which has justified decades of public subsidization. For nearly 100 years, the federal government has subsidized ownership through the mortgage interest tax deduction and the secondary mortgage market.⁵

Yet these incentives for ownership have been in place far longer than the existence of fair lending and fair housing protections, meaning that the benefits of federal subsidies for ownership have not been equally realized by all protected classes. This explains some of the reason for ownership disparities today, in addition to the now-illegal practices of redlining, steering, blockbusting, unfair lending, and discriminatory pricing.⁶ As shown in

⁵ Despite the many public and private interventions to expand ownership, the overall U.S. rate has been stubbornly stagnant. In 2015, 63.7 percent of households were owners, compared to 63.9 in 1990. Contrary to what many U.S. residents believe, the U.S. does not lead developed countries in homeownership. Instead, the U.S.' rate of ownership is similar to that of the United Kingdom (63.5%) and lower than Canada's (67.0%).

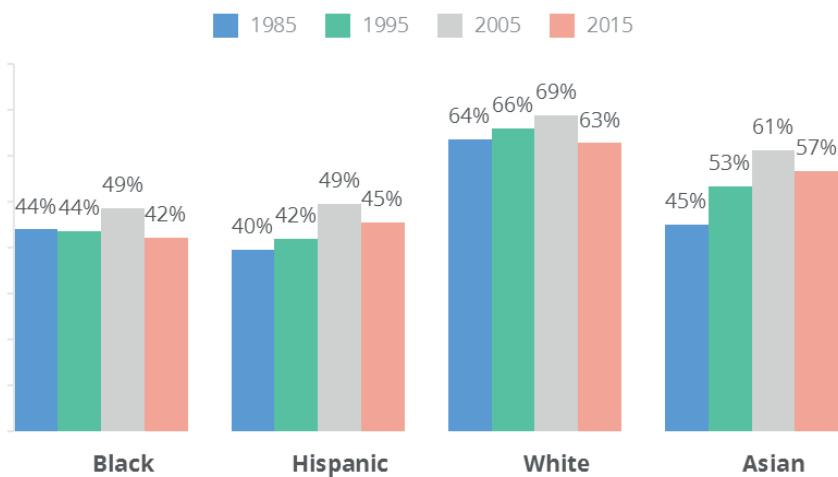
⁶ "Steering" refers to the practice of showing home- and apartment-seekers homes only in neighborhoods with residents of similar races and ethnicities; it is now illegal for real estate agents to engage in steering. "Blockbusting," which is also illegal, refers to the practice of real estate agents and builders convincing homeowners to sell their homes below market because of the fear that minorities could be moving into the neighborhood, and then reselling those homes to minorities at inflated prices. "Discriminatory pricing" means intentionally charging certain protected classes more for housing than others and is often a product of steering, blockbusting, subprime lending, and other illegal practices.

the following figure, national homeownership rates of Black and Hispanic households are far lower than the rates of Asian and Non-Hispanic White households.

Nationwide, difference in homeownership rates contribute to the racial wealth gap.⁷ According to a recent analysis of national ownership trends, African American homeownership has fallen during past 30 years, while Hispanic and, especially, Asian rates have increased.⁸ As of 2015, African American households with a college degree were less likely to own a home than White households *without a high school degree*.⁹

Figure VI-28 shows trends in ownership by race and ethnicity in the U.S. Only Asian and Hispanic households have seen rates increase since 1985 and both increases have been significant, especially for Asian households.

Figure VI-28.
U.S.
Homeownership
Trends by Race
and Ethnicity,
1985 to 2015



Source:
Homeownership and the American Dream, Journal of Economic Perspectives, Winter 2018

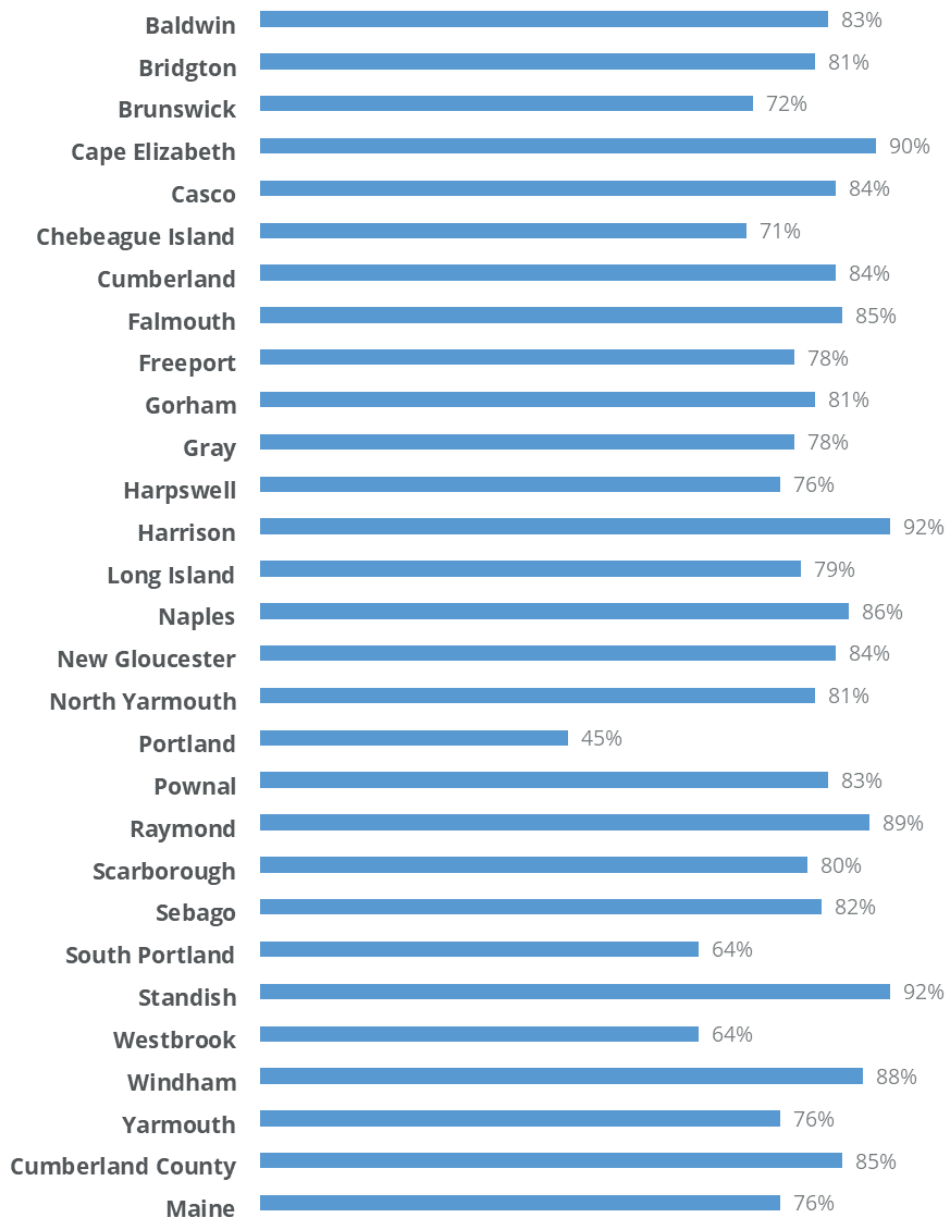
The homeownership rate in Cumberland County (70%) is slightly lower than the state overall (73%). By jurisdiction, Portland has the lowest rate at 45%, followed by South Portland and Westbrook, both at 64%. All other jurisdictions, except for Brunswick (72%) and Chebeague Island (71%) have homeownership rates higher than the state's overall. Harrison and Standish have the highest rates at 92%, followed by Cape Elizabeth at 90%.

⁷ Hamilton, Darrick, and William A. Darity. "The political economy of education, financial literacy, and the racial wealth gap." (2017): 59-76.

⁸ White ownership has declined slightly, by .8 percent.

⁹ https://www.urban.org/sites/default/files/publication/96221/homeownership_and_the_american_dream_0.pdf

Figure VI-29.
Homeownership Rate by Jurisdiction and Compared to Maine, 2020



Source: 2020 5-year ACS estimates.

Figure VI-30 shows ownership by age for Portland and Cumberland County compared to Maine (this level of detail is not available for smaller jurisdictions). Householders under age 35 have the lowest homeownership rates, with a minority owning their homes; homeownership among this age cohort is particularly low for Portland. In Maine and Cumberland County, rates are relatively high for all other age groups except for the oldest households. Portland’s homeownership rate is much lower across age groups. In all

jurisdictions, 85-year-olds are more likely to be homeowners than those under 35 years old.

Figure VI-30.
Homeownership
Rates by Age of
Householder,
Portland, Cumberland
County, and Maine,
2020

Source: 5-year ACS and Root Policy Research

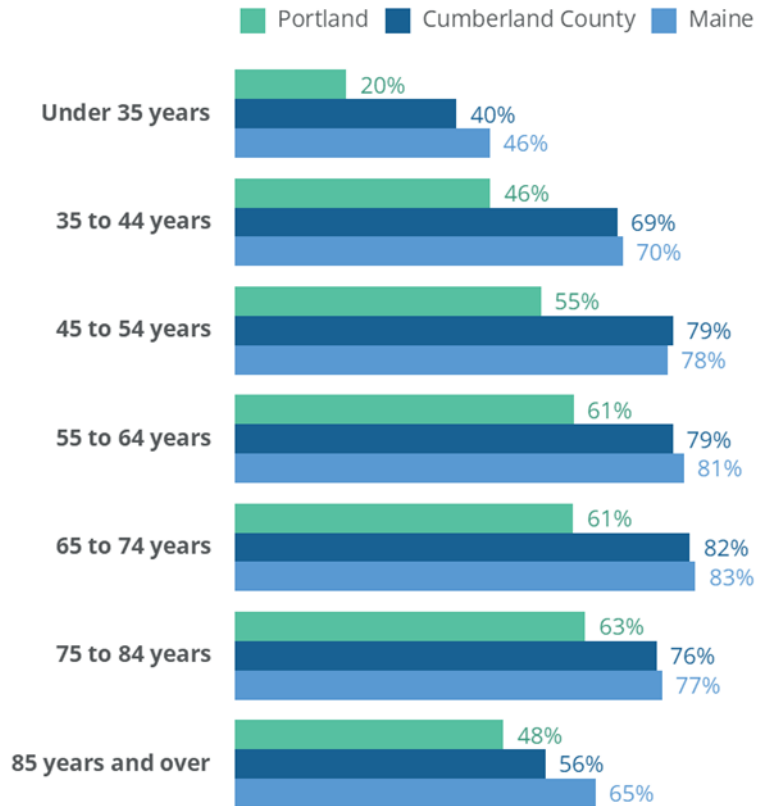


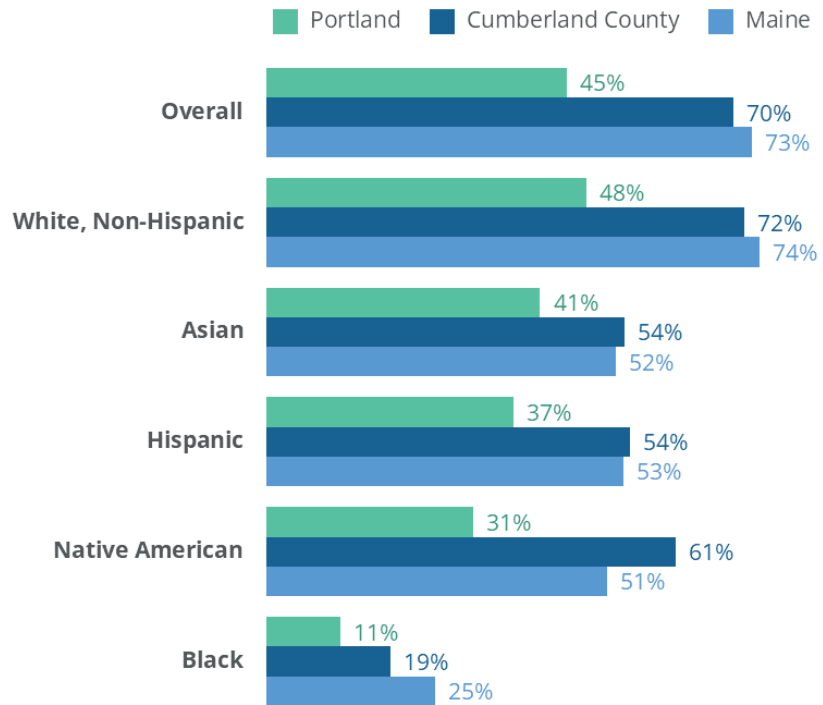
Figure VI-31 shows ownership by race and ethnicity for Portland and Cumberland County compared to Maine (again, this level of detail is not available for smaller jurisdictions).

- White households have the highest homeownership rate in the state (74%) and in Cumberland County (72%).
- African American/Black households have extremely low rates of ownership in Portland and Cumberland County: About one in 10 African American/Black households are owners in Portland. One in five are owners in Cumberland County, and one in four are owners in the state overall. Portland’s African American/Black homeownership rate is nearly half of that in Cumberland County.
- Native American homeownership rates are much higher in Cumberland County than in the state overall (61% v. 51%).

Several factors are likely driving the low rate of ownership in Portland for African American/Black households. Portland’s younger population in relation to the County and the State contributes to its lower homeownership rates overall (Figure VI-30), as does its lower overall income relative to the county (Figure IV-18e). Additionally, while the Black or African American population makes up 10% of the city’s population, 45% of the African American or Black population in the city are foreign-born. In addition to being younger and

having lower incomes compared to the non-immigrant population, the immigrant population faces distinct challenges to homeownership, including unfamiliarity with the banking system, language barriers, and credit history length. Moreover, for Portland residents who practice Islam, Islamic law does not allow taking on interest-bearing loans, which makes buying a home with a traditional mortgage infeasible.

Figure VI-31.
Homeownership
Rates by
Race/Ethnicity,
Portland,
Cumberland
County, and
Maine, 2020



Source:
 2020 5-year ACS and Root
 Policy Research.

Figure VI-32 shows the number of non-White households who would need to shift from renting to owning a home to close the racial home ownership gap. For Cumberland County,

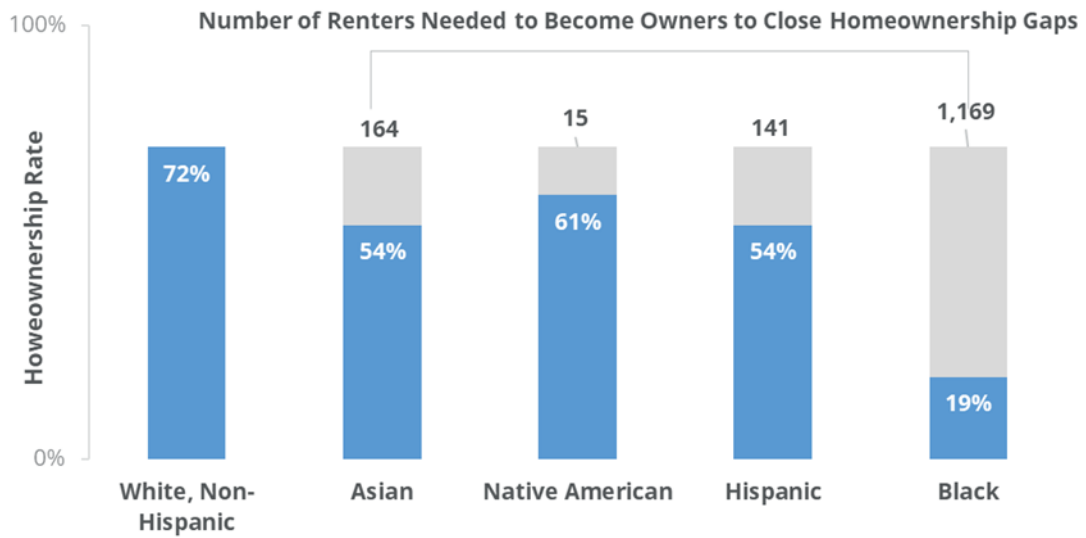
- Asian (164), Native American (51), and Hispanic (141) households would need moderate increases in ownership to close the gap in their ownership rates relative to White households.
- A much larger number—1,169 African American/Black renters—would need to become owners to close the White/Black homeownership gap.

For Portland,

- Asian (30), Native American (8), and Hispanic (53) households would need minimal increases in ownership to close the gap in their ownership rates relative to White households—all fairly low numbers.
- A much larger number—597 African American/Black renters—would need to become owners to close the White/Black homeownership gap.

Figure VI-32a.

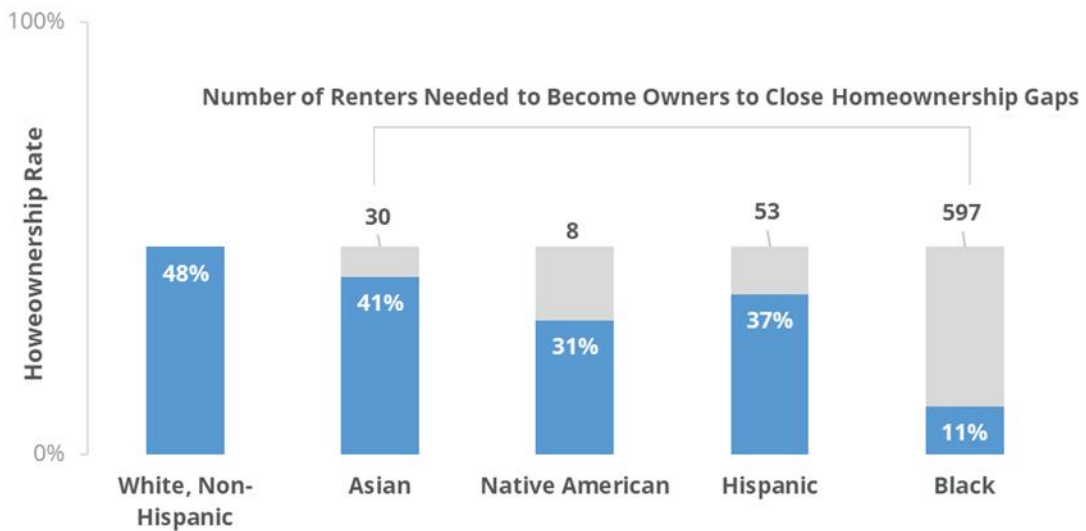
Closing the Gaps between White Homeownership Rates and Homeownership Rates of People of Color, Cumberland County, 2019



Source: 2019 5-year ACS data and Root Policy Research.

Figure VI-32b.

Closing the Gaps between White Homeownership Rates and Homeownership Rates of People of Color, Portland, 2019



Source: 2019 5-year ACS data and Root Policy Research.

Access to mortgage loans. Two federal laws regulate fairness in lending. The FFHA prevents discrimination in residential real estate transactions, including mortgage loans.¹⁰ The Equal Credit Opportunity Act (ECOA), which was enacted in 1974, forbids discrimination in all credit transactions and covers the protected classes of race, color, religion, national origin, sex, marital status (not covered by the FFHA; the FFHA uses familial status), age, and income from public assistance (also not covered by the FFHA).

Most households seeking mortgages are included in Federal Home Mortgage Disclosure Act (HMDA) data. These data are used to examine differences in mortgage loan denial rates and high-priced loans—a critical factor in accessing homeownership for all but wealthy households.

During 2020, 21,135 individuals or households applied for some type of mortgage loan in Cumberland County; of these 3,688 were for properties in Portland.

- 12% of mortgage loan applications were denied in Cumberland County in 2020, down from 20% in 2018. In Portland, trends were similar with 11% of mortgage loan applications denied in 2020, down from 20% in 2018.
- Home improvement loans were much more likely to be denied, with a denial rate of 29% in Cumberland County and in Portland.
- Home purchase and refinances were most likely to be approved. In Cumberland County, the denial rate for home purchase loans was 9%, and 10% for refinances. Denial rates were similar in Portland, where the denial rate for home purchase loans was 8%, and 10% for refinances. These rates are also similar to the U.S. overall (9.3% for home purchases and 13.2% for refinances).¹¹

¹⁰ Mortgage lending is covered in the FFHA through the prohibition of discrimination in “residential real estate transactions,” which includes making loans for home purchases.

¹¹ Table 4 [cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf \(consumerfinance.gov\)](#)

**Figure VI-33.
Home Loan Denial
Rates by Loan
Type, Cumberland
County and
Maine, 2020**

Source:
HMDA and Root Policy Research.

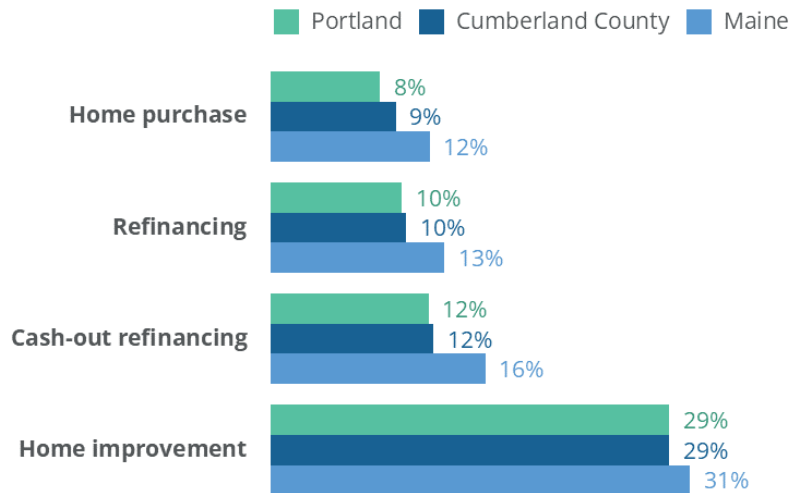


Figure VI-34 shows denial rates by race and ethnicity.

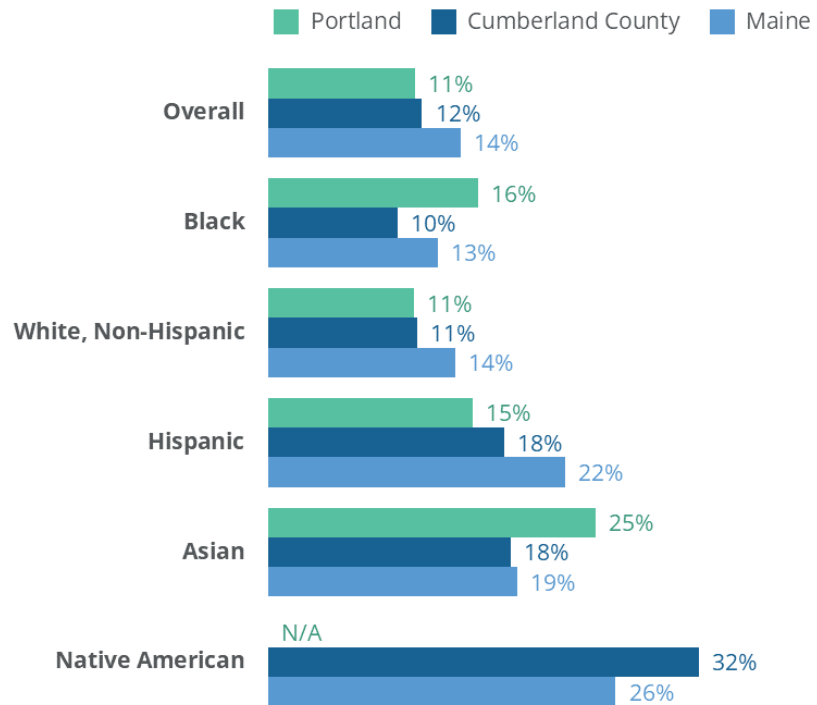
- Home loan denial rates were lowest among African American/Black and White Cumberland County applicants, at 10% and 11% respectively. The very low denial rate among African American/Black applicants is unusual for U.S. cities, and is particularly notable given the extremely low homeownership rate among African American/Black households in the county and city. This outcome is likely partially explained by the very low unemployment rates of African American/Black residents in Cumberland County (1.4% unemployment, compared to 5.3% in the county overall).¹²
- In Portland, African American/Black applicants have a higher denial rate (16%) compared to the County, although the number of loan applications is small. White applicants had the lowest denial rate of 11% followed by Hispanic applicants at 15%.¹³
- Denial rates were highest among Native Americans in Cumberland County: their loan applications were denied at a rate of 32%. This is also notable given the relatively high rates of ownership among Native Americans in the county. In Portland, denial rates were highest among Asian applicants (25%), although the number of Asian applicants is too small to discern meaningful trends.

Denial rates were also calculated for applicants and co-applicants of the same gender/sex. That denial rate was 10%, lower than the overall rate and the same rate as Black borrowers.

¹² It is important to note that the number of African American/Black applicants for loans is very low, totaling 175 in 2020 and 96 in 2018 in all of Cumberland County.

¹³ The number of Hispanic applicants for loans is also very low, totaling 197 in 2020 in all of Cumberland County.

Figure VI-34
Home Loan
Denial Rates by
Race/Ethnicity,
Portland,
Cumberland
County and
Maine, 2020



Source:
HMDA and Root Policy
Research.

The figure below shows trends in mortgage loan denials by race and ethnicity for Portland and Cumberland County. The denial rate for home purchases in Cumberland County went from 39% in 2018 to 10% in 2020, in comparison the denial rate for home purchases in the U.S. increased slightly from 17% in 2018 to 18% in 2020.¹⁴ Portland exhibits similar trends.

Denials declined significantly for all racial and ethnic groups in Cumberland County, with the largest drop for African American/Black households, whose denial rates were among the highest of any group in 2018. Portland showed similar trends except for Asian and Native American applicants, whose denial rates increased.

Although the number of African American/Black applicants is small in Cumberland County, it has been growing, going from 96 in 2018 to 175 in 2020. The growth was largely driven by applications for home purchases, which increased from 57 in 2018 to 113 in 2020, while the number of denied home purchase applications decreased from 22 to 11—meaning that the decline in denial rates has been driven by a decline in the denial rate of home purchases loans—a good step toward decreasing homeownership gaps. Furthermore, this was not driven by an influx of higher income applicants, as the income distribution of applicants has not changed meaningfully since 2018.¹⁵

¹⁴ https://files.consumerfinance.gov/f/documents/cfpb_2020-mortgage-market-activity-trends_report_2021-08.pdf

¹⁵ In 2018 26% of applicants had income above 120% AMI compared to 28% in 2020.

Figure VI-35a.
Home Loan Denial Trends by Race/Ethnicity, Cumberland County, 2018 - 2020

Source:
 HMDA and Root Policy Research.

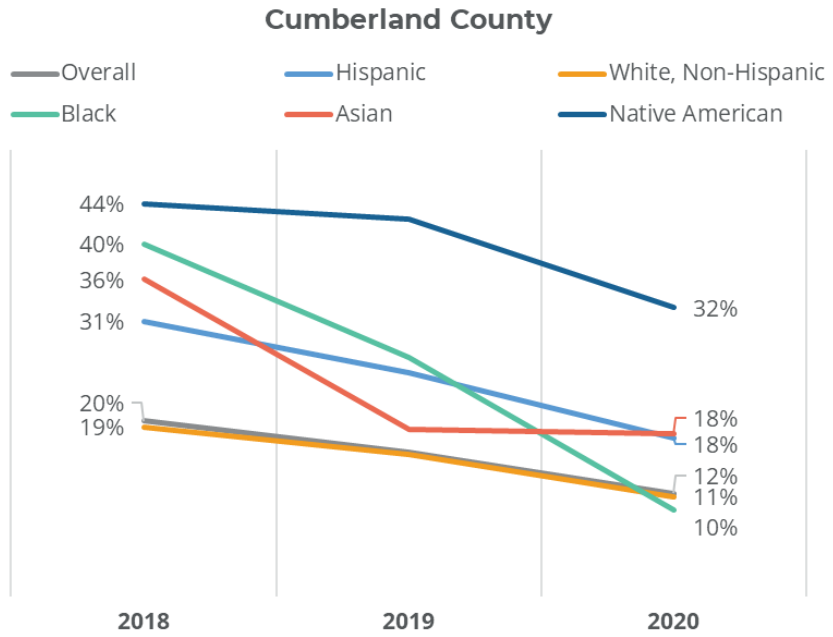
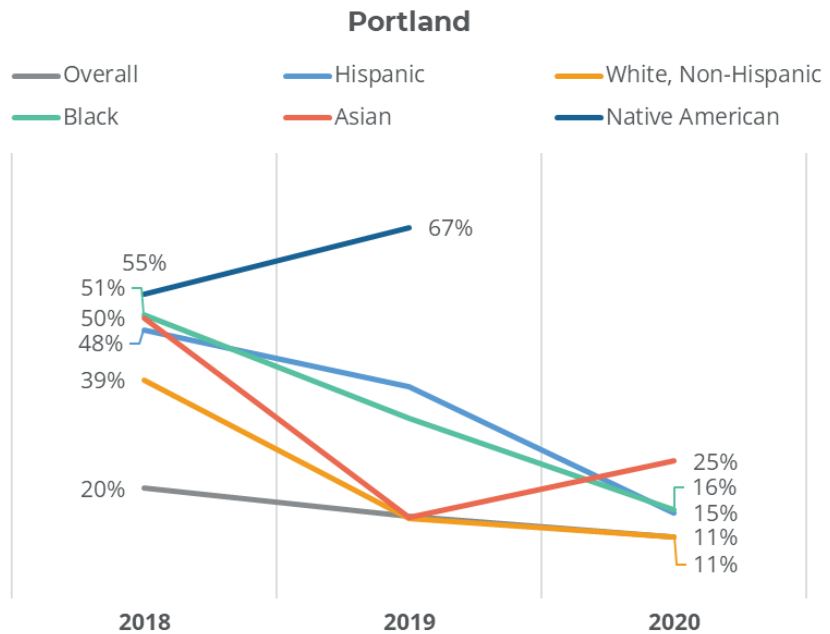


Figure VI-35b.
Home Loan Denial Trends by Race/Ethnicity, Portland, 2018 - 2020

Source:
 HMDA and Root Policy Research.



Denial rates for the largest jurisdictions, focusing on Districts 4 and 5, are shown in Figure VI-36.

- South Portland had the lowest denial rate for African American/Black applicants, at 4%. All jurisdictions have very low denial rates for African American/Black applicants.
- South Portland had relatively high denial rates for Hispanic applicants (20%) and Native American applicants (all were denied loans).

- There is the most consistency in denial rates across jurisdictions for White applicants.
- Westbrook’s denial rate for Hispanic applicants and especially Asian applicants is relatively high.

Figure VI-36.
Denial Rates by
Race/Ethnicity,
Larger Jurisdictions
and Cumberland
County, 2020

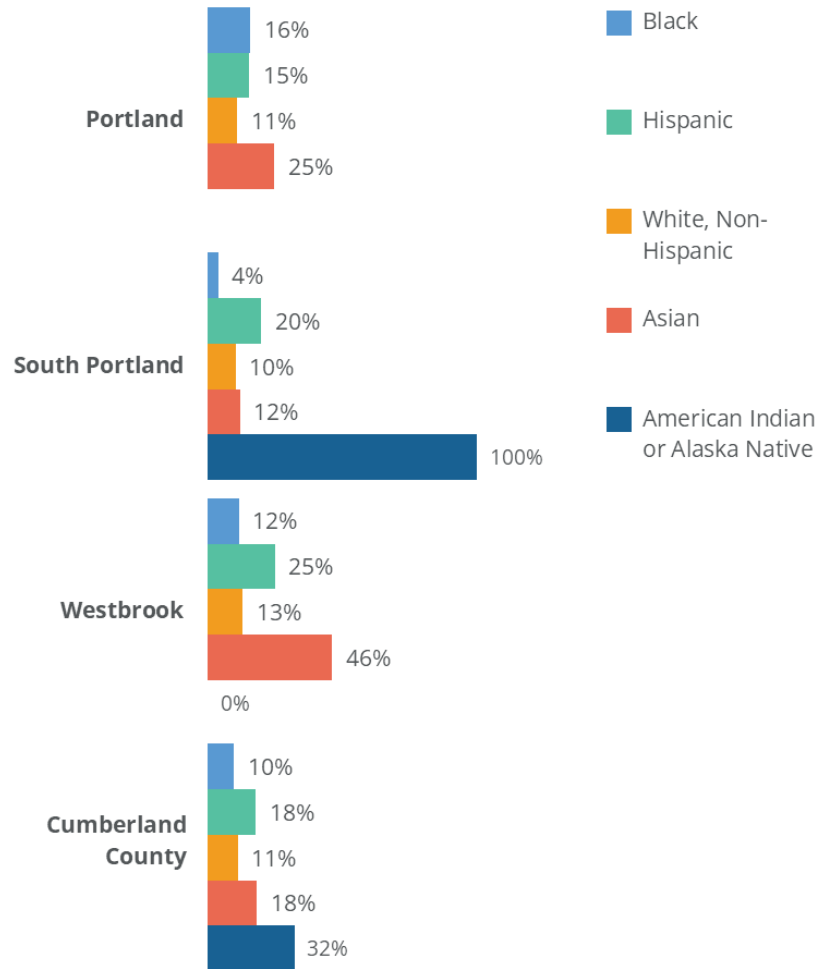
Notes:

Does not include loans for multifamily properties or non-owner occupants. Race categories are mutually exclusive.

Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source:

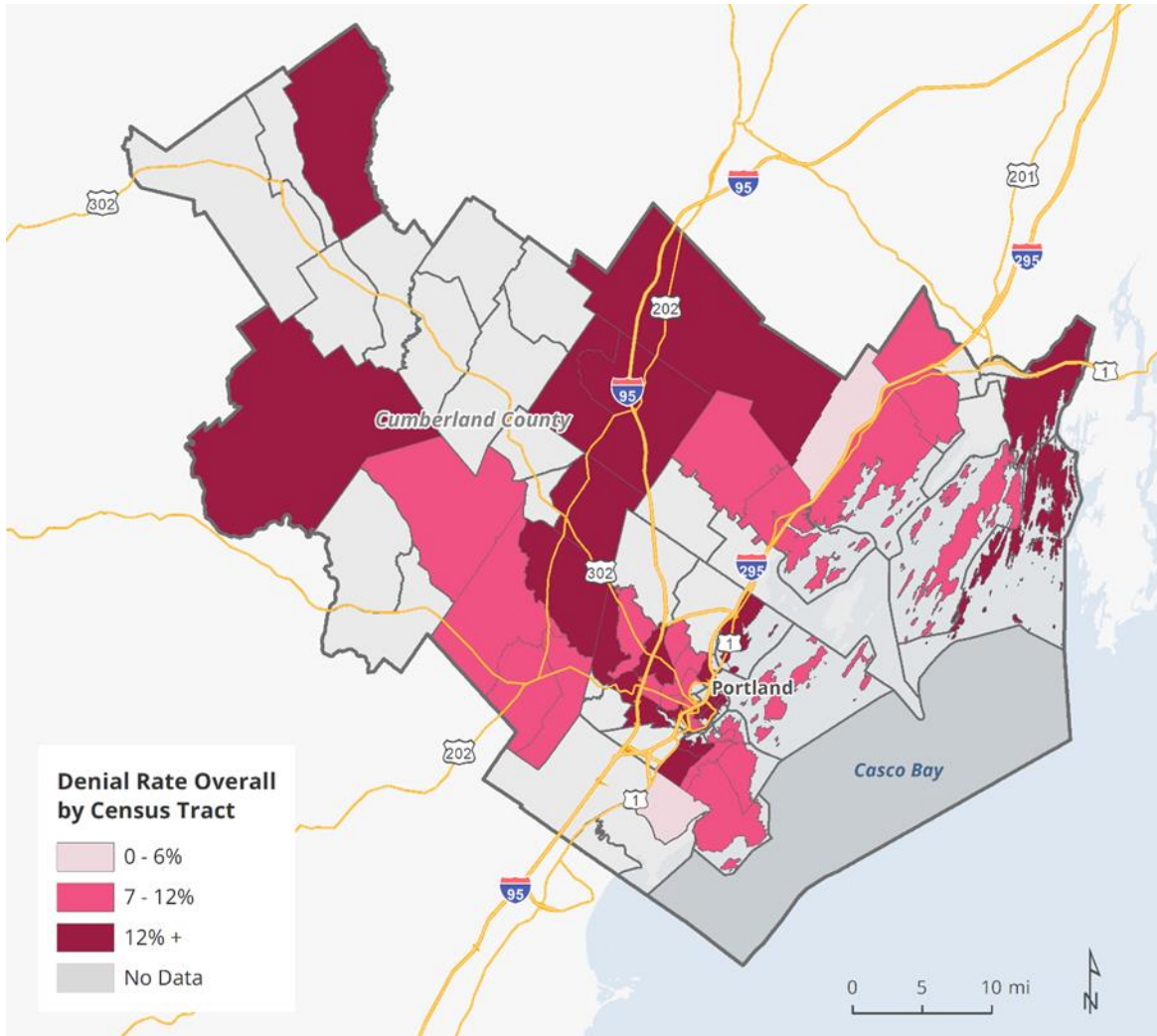
FFIEC HMDA Raw Data, 2020 and Root Policy Research.



The following maps show denial rates by Census tract—overall and by races and ethnicities for which there was enough lending activity by Census tract. For all but non-Hispanic, White applicants, the volume of applications was too small to draw strong conclusions, except for a handful of Census tracts in the metro Portland area.

The maps show that denial rates outside of the Portland – South Portland area were mostly driven by White applicants. African American/Black applicants, in particular, have a preference for buying in and near Westbrook, while Asian and Hispanic applicants seek ownership in slightly broader geographic areas. White applicants appear less likely to be denied in many of the neighborhoods where applicants of color are focusing their homebuying efforts.

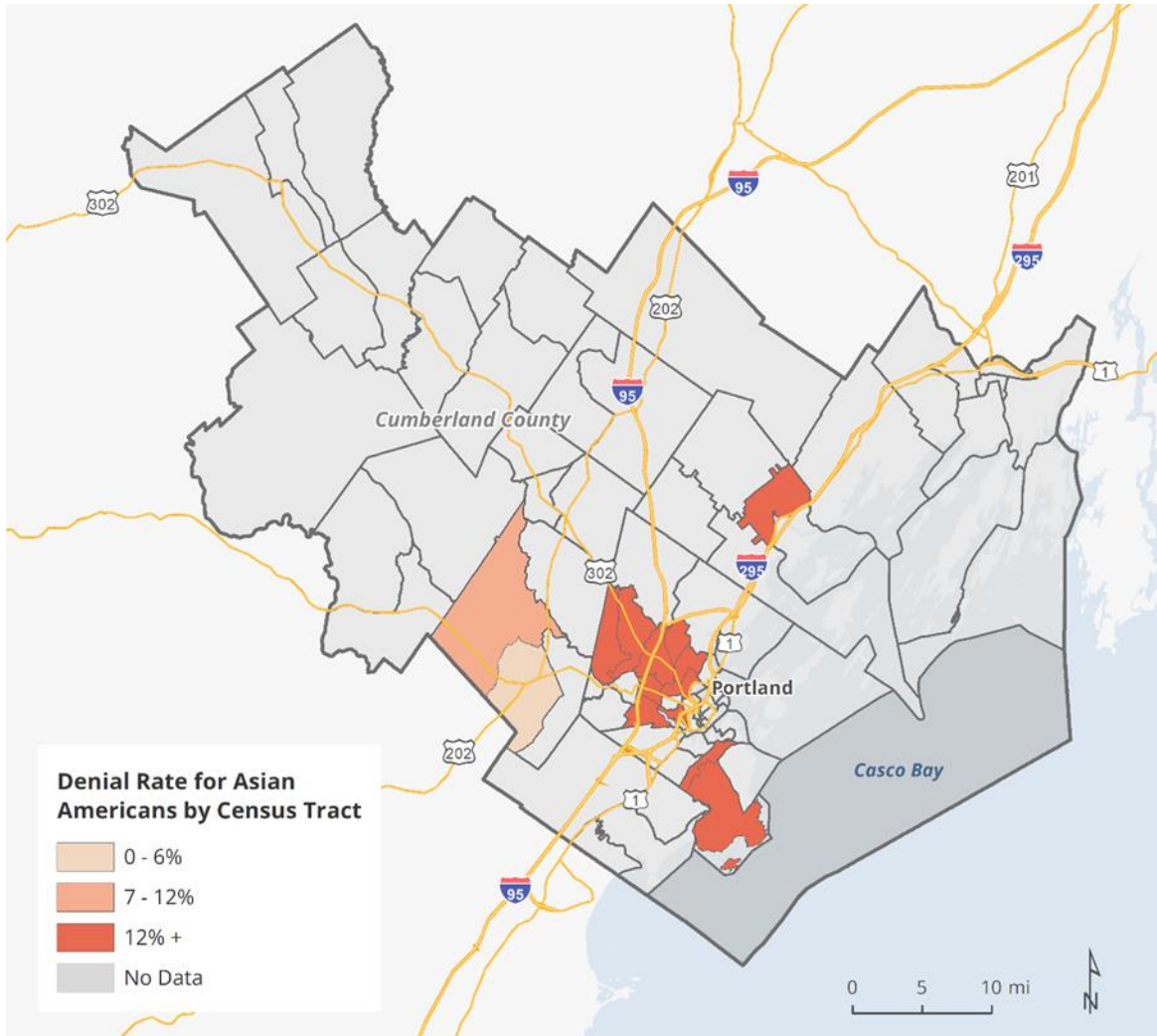
Figure VI-37a.
Denial Rate Overall for Cumberland County by Census Tract, 2020



Note: Does not include loans for multifamily properties or non-owner occupants. Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source: FFIEC HMDA Raw Data, 2017 and Root Policy Research.

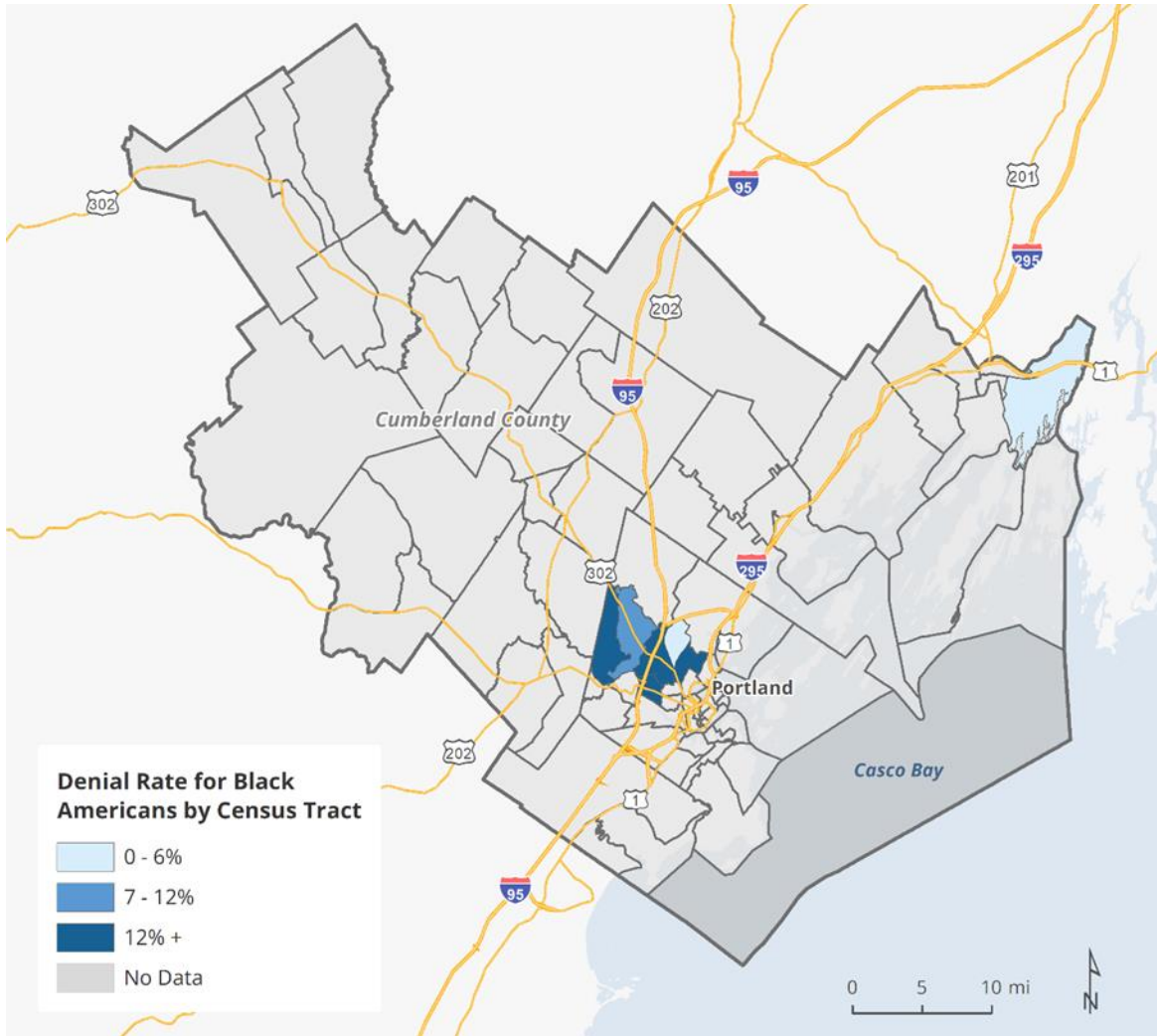
Figure VI-37b.
Denial Rate for Asian Americans by Census Tract, 2020



Note: Does not include loans for multifamily properties or non-owner occupants. Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source: FFIEC HMDA Raw Data, 2017 and Root Policy Research.

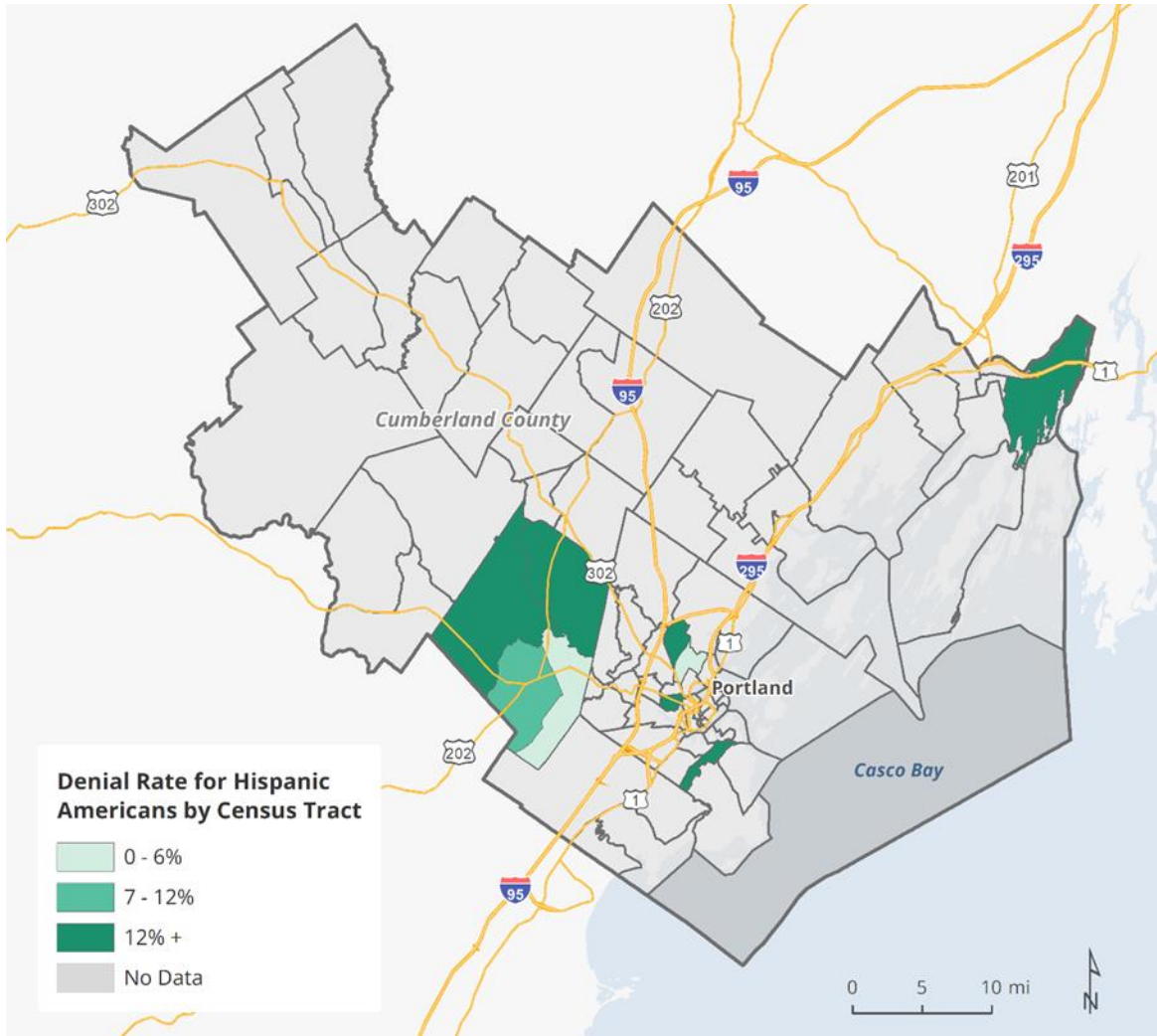
Figure VI-37c.
Denial Rate for Black Americans by Census Tract, 2020



Note: Does not include loans for multifamily properties or non-owner occupants. Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source: FFIEC HMDA Raw Data, 2017 and Root Policy Research.

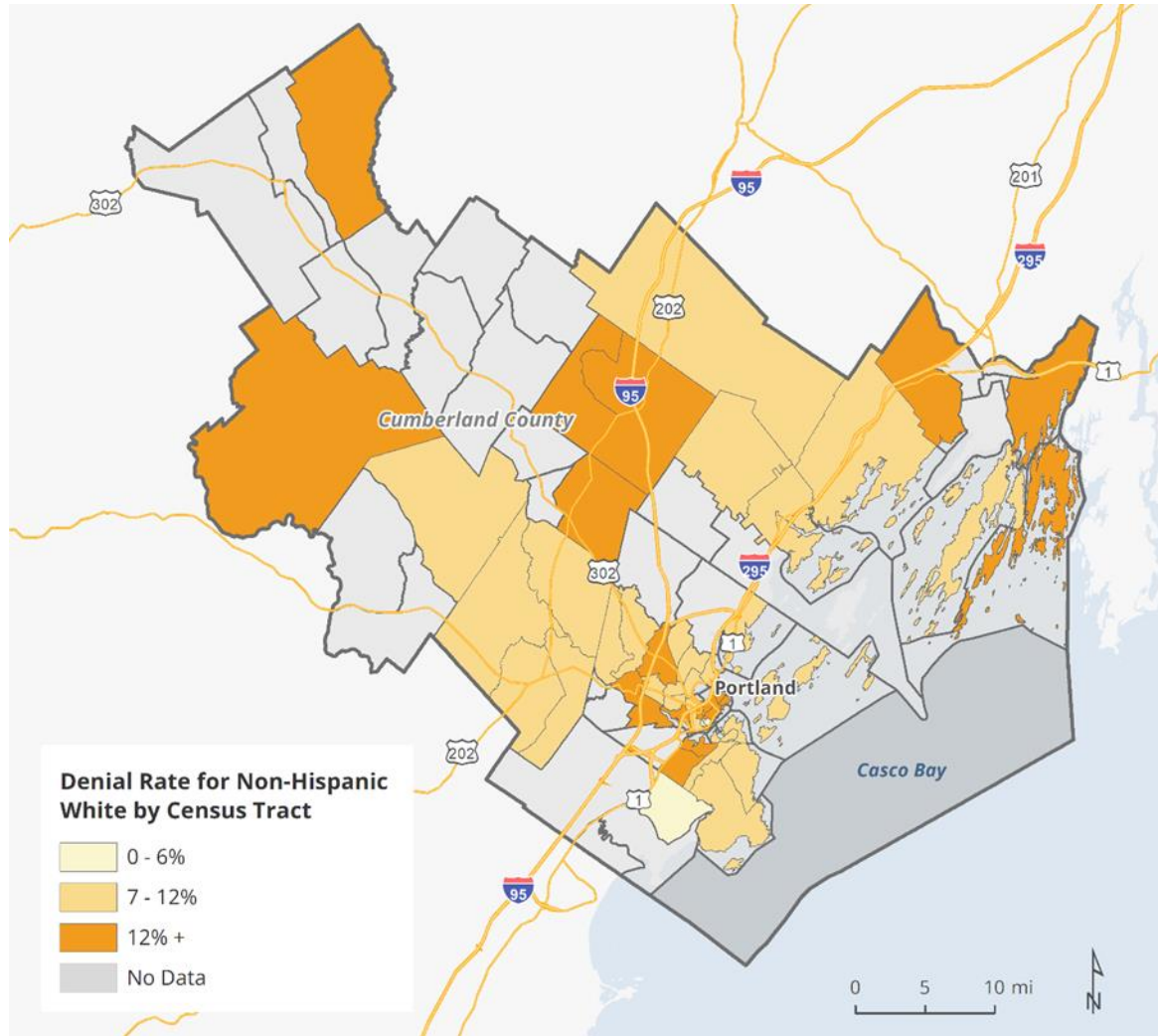
Figure VI-37d.
Denial Rate for Hispanic Americans by Census Tract, 2020



Note: Does not include loans for multifamily properties or non-owner occupants. Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source: FFIEC HMDA Raw Data, 2017 and Root Policy Research.

Figure VI-37e.
Denial Rate for Non-Hispanic Whites by Census Tract, 2020



Note: Does not include loans for multifamily properties or non-owner occupants. Denial Rate is the number of denied loan applications divided by the total number of applications, excluding withdrawn applications and application files closed for incompleteness.

Source: FFIEC HMDA Raw Data, 2017 and Root Policy Research.

There are many reasons why denial rates may be higher for certain racial and ethnic groups. First, some racial and ethnic groups are very small, so the pool of potential borrowers is limited and may skew towards lower income households, since households of color typically have lower incomes. An analysis of differences in denials by race, ethnicity, and income can provide additional insight into the factors behind the denials.

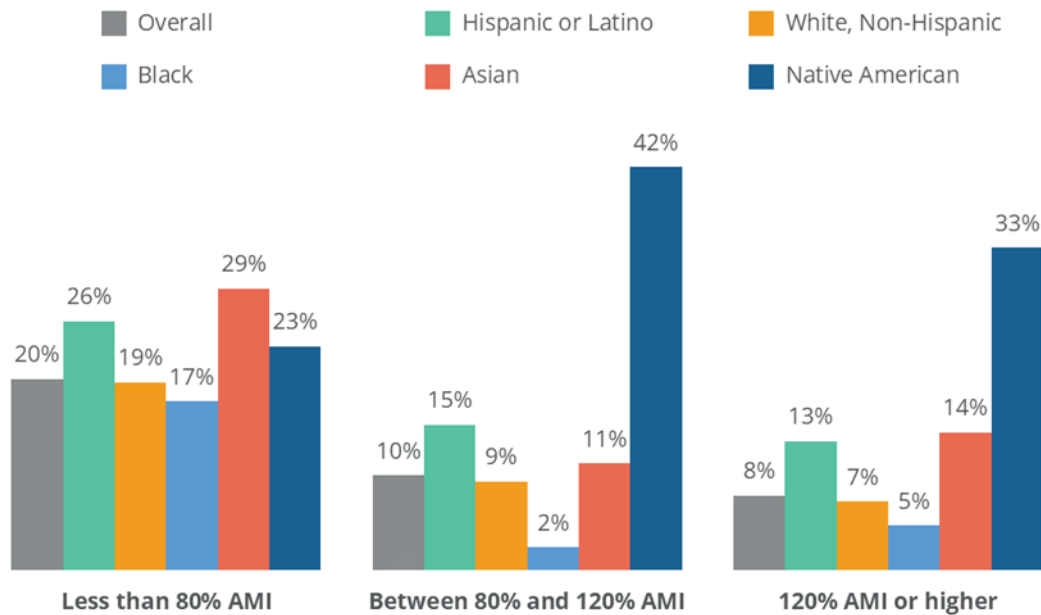
Figure VI-38 examines differences in loan denial rates by income range. Loan applicants were grouped into one of three income ranges:

- Applicants earning less than 80 percent of the HUD Median Family Income (MFI) at the time—or less than \$68,800;
- Applicants earning between 80 and 120 percent MFI—\$68,800 and \$103,200; and
- Applicants earning greater than 120 percent MFI—\$103,200 and more.

The figure demonstrates that in Cumberland County:

- All non-Native American applicant cohorts saw a decline in denials as their incomes met or exceeded 80% AMI;
- Native American application denial rates persist and even increase at higher income levels; and
- African American/Black applicants experienced the lowest rejection rates across all income groups—a very positive finding.

Figure VI-38a.
Home Loan Denial Rates by Race/Ethnicity and Income, Cumberland County, 2020



Note: All home loan types included (i.e., home purchase, refinance, etc.)

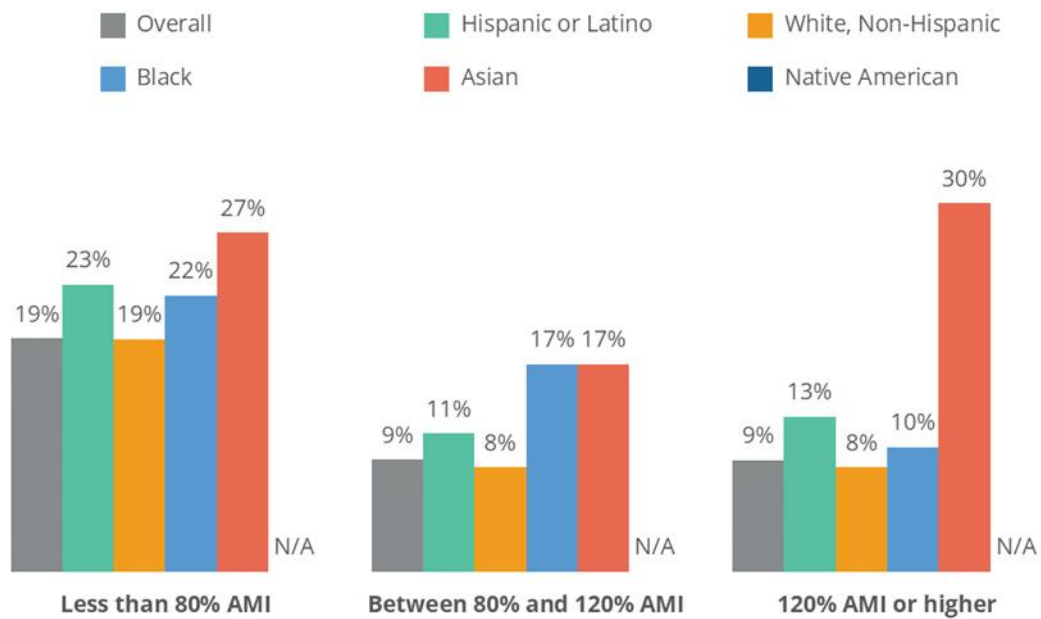
Source: HMDA and Root Policy Research.

The figure demonstrates that in Portland:

- All applicant cohorts, except Asian applicants, experience decline in denials as their incomes increase.

- Asian application denial rates are the highest among households with income above 120% AMI, although the number of Asian applicants is too small to discern meaningful trends.
- White applicants experienced the lowest denial rates across all income groups.

Figure VI-38b.
Home Loan Denial Rates by Race/Ethnicity and Income, Portland, 2020



Note: All home loan types included (i.e., home purchase, refinance, etc.)

Source: HMDA and Root Policy Research.

Figure VI-39 shows the reasons for loan denials by race and ethnicity. High debt-to-income ratio was the primary reason for denials across racial groups—especially for African American/Black and Asian applicants. Credit history was the second most common reason. Insufficient cash for downpayment and closing costs was a minimal factor for denial across racial and ethnic groups.

These data suggest that personal finance improvement programs are as important—if not more so—than downpayment assistance programs.

Figure VI-39.
Loan Denial Reasons by Race/Ethnicity, Cumberland County, 2020

Reason for Denial	Percent of all Reasons by Race/Ethnicity				
	White, Non-Hispanic	Hispanic	Black	Native American	Asian
Debt-to-income ratio	35%	36%	60%	33%	46%
Credit history	20%	20%	20%	22%	11%
Collateral	14%	8%	0%	22%	9%
Other	11%	12%	0%	0%	15%
Credit application incomplete	14%	16%	7%	11%	13%
Unverifiable information	3%	4%	0%	11%	2%
Employment history	2%	4%	7%	0%	2%
Insufficient cash (downpayment, closing costs, etc.)	1%	0%	7%	0%	2%
Mortgage insurance denied	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%

Source: HMDA and Root Policy Research.

High-priced loans. While subprime lending has decreased dramatically since 2006, before the Great Recession, analysis of differences in “high priced” loans can be used to identify where additional scrutiny is warranted, and how public education and outreach efforts should be targeted. For the purpose of this section, we define loans as “high priced” if the APR exceeded the average prime offer rate (APOR) for loans of a similar type by at least 1.5 percentage points for first-lien loans.

Figure VI-40 shows the high price loan by race and ethnicity and as a share of all Cumberland County loans originated; Figure VI-41 shows trends in high priced loans.

- Black applicants were most likely to receive a high priced loan in Cumberland County in 2020 at 6% of all loans.
- Native Americans were the least likely to receive high priced loans (none received high priced loans).
- Overall, 3% of the mortgage loans originated in Cumberland County in 2020 carried high interest rates.
- In Portland, 3% of the mortgage loans originated carried high interest rates. This share was also 3% for White borrowers, higher than for minority applicants (0%).
- The share of loans that were high priced in Portland, Cumberland County, and Maine was much lower in 2020 than in 2018 and 2019.

Figure VI-40.
High-priced Loans
by Race, Portland,
Cumberland
County, 2020

Source:
 HMDA and Root Policy Research.

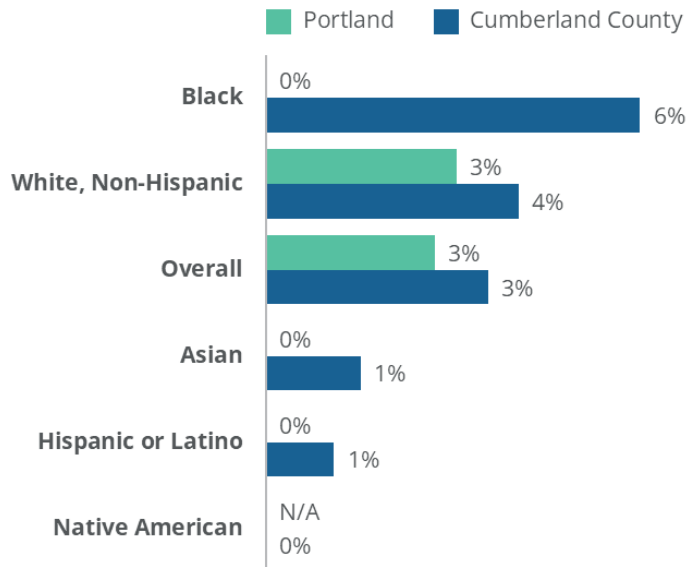
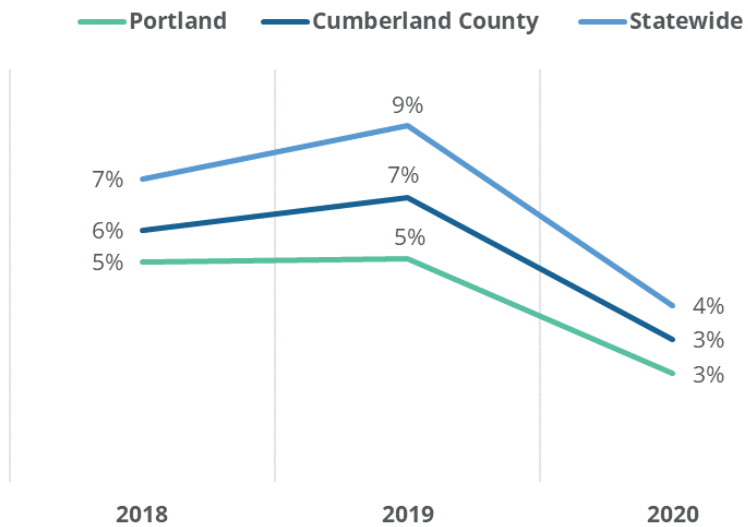


Figure VI-41.
Share of High-
priced Loans,
Portland,
Cumberland
County and Maine,
2018 to 2020

Source:
 HMDA and Root Policy Research.



Bias in credit decisions. Bias is thought to be a human condition that, in theory, could be eliminated by giving the responsibility for the credit decision to a truly objective party, such as a computer. However, a recent study, conducted by researchers at UC Berkeley, found discrimination inherent in the algorithms computers use to determine mortgage pricing.

The study found that, nationally, Latinx and African American borrowers paid between 5.6 and 8.6 basis points more for mortgage loans made between 2008 and 2015 regardless of the type (computer or human) of lender. This is equivalent to 11 to 17 percent of lender

profit on the average loan, meaning that lenders earn significantly more from loans made to Latinx and African American homebuyers.¹⁶

There was little difference in the rate charged by computer or human, suggesting that the higher rate charged to minority borrowers is a factor of other variables. In refinances, the minority interest rate differential was much lower, between one and three basis points. This led the research team to speculate that timing (urgency of getting a loan to buy a home once found) and frequency of comparison shopping could explain the interest rate differences.

Of equal importance was the finding that face-to-face mortgage transactions led to higher rejection rates for Latinx and African American borrowers: humans rejected loans to these borrowers four percent more often than a computer did. In fact, computer rejections did not discriminate on the basis of race and ethnicity at all.

Alternative financial products. Households who are rejected from traditional lending products—or who are unaware of or distrust traditional lenders—use alternative financial products, many of which carry very high interest rates and inhibit financial stability and wealth-building.

A cornerstone of the Federal Deposit Insurance Corporation’s (FDIC) economic inclusion (<https://www.economicinclusion.gov/whatis/>) project is a study of what the FDIC has identified as unbanked and underbanked households. “Unbanked” households are those in which no one in the household has a checking or savings account. “Underbanked” households are those who have an account in an insured institution but also use services that are likely to charge high or very high rates. These services include checking cashing institutions, payday loans, “tax refund anticipation” loans, rent-to-own services, pawn shop loans, and/or auto title loans.

Improving the rate of banked households is important for several reasons:

- Households who use financial institutions covered by the FDIC benefit from government insurance on their deposits;
- Households who use regulated banks are less likely to face discriminatory or predatory practices and pay lower rates than non-regulated lenders; and
- Financial institutions may offer cash management services (overdraft protection, financial planning) or classes that help stabilize household finances and lower the risk of loan default and missing or being late on rent or mortgage payments.

¹⁶ The time period covered in that study includes the period when subprime loans were common; subprime loans are a much smaller part of the market today. Several lawsuits and challenges have demonstrated that minority borrowers received subprime loans that were not risk-justified.

The FDIC studies the prevalence of unbanked and underbanked households every two years. The latest survey (2019) found that:

- 5.4% of U.S. households are “unbanked,” which is the lowest rate since the study began in 2009. The unbanked rate fell by a full percentage point between 2017 and 2019.
- Nearly 20% of U.S. households—18.7%—are “underbanked.” This rate also fell between 2015 and 2017, by a remarkable 1.2 percentage points. This variable was not included in 2019.
- The State of Maine has an unbanked rate of 2.3%, much lower than the U.S. overall. This rate declined from 2017, where it was 4%, and from 2009, when it was 2.6%.
- The Portland-South Portland region has a very low unbanked rate of 1.6%.

Publicly Supported Housing

This section examines the role that publicly supported housing plays in facilitating housing choice in Cumberland County and Portland. It begins with a summary of the benefits of publicly supported housing and the importance of location. It then examines the distribution and targeting of publicly assisted housing, and ends with a review of public housing authority policies and procedures.

A growing body of recent research has bolstered the evidence that where affordable and mixed-income housing is developed has a long-term impact on the households that occupy that housing. It also demonstrates the public benefits of housing stability. Most of these studies have examined the effects on children. For example:

- A study by researchers at Johns Hopkins University found that when assisted housing is located in higher quality neighborhoods, children have better economic outcomes. The study also concluded that because low income African American children are more likely than low income white children to live in assisted housing, the location of assisted housing in poor quality neighborhoods has a disproportionate impact on African American children's long-term economic growth.
- Dr. Raj Chetty's well known Equality of Opportunity research found positive economic returns for adults who had moved out of high poverty neighborhoods when they were children. The gains were larger the earlier children moved.
- A companion study by Dr. Chetty examining social mobility isolated the neighborhood factors that led to positive economic mobility for children. Children with the largest upward economic mobility were raised in neighborhoods with lower levels of segregation, lower levels of income inequality, higher quality schools, and greater community involvement ("social capital").

This research is counter to years of housing policies and programs that focused on building large multifamily complexes to house persons living in poverty, often placing these developments in the least desirable neighborhoods in urban areas.

Neighborhood opposition. Neighborhood resistance to publicly subsidized housing—especially housing that is viewed as raising public service costs (education, transportation)—often restricts where subsidized housing is located. Homeowners' concerns typically range from increased traffic, on-street parking, neighborhood crime, and effects on property values. While concerns about potential negative spillovers from higher density and multifamily housing nuisances are valid, there is not enough strong empirical evidence to validate such concerns.

In Cumberland County, affordable housing opposition is commonly framed as concerns about density or about the impacts on schools.

- In late 2021, a developer of 46 units of proposed affordable housing in Cape Elizabeth halted the process due to the risk of a public referendum reversing the zoning changes needed for it to move forward;
- To counter such opposition, some communities (Baldwin, Cumberland, and Windham) will only exempt elderly housing from their growth limits—not family housing. Policies like these have a clear and disparate impact on families.

Characteristics of occupants of publicly subsidized housing. Figure VI-42 shows the racial and ethnic distribution of publicly supported housing beneficiaries. The table, which is derived from HUD data, shows the racial and ethnic distribution for the HOME Consortia overall, which this document covers.

- Relative to the racial and ethnic distribution of the county overall, public housing is less likely to be occupied by non-Hispanic White residents and more likely to be occupied by African American/Black residents and Asian residents.
- Other multifamily housing—which is mostly comprised of senior housing—is nearly entirely occupied by non-Hispanic White residents.
- Project-based Section 8 developments, and Section 8 vouchers, align most closely with the overall racial and ethnic distribution of the county.

These occupancy characteristics are an important consideration in future affordable housing planning. Planning and policies that favor one type of housing or subsidy over another could have a disparate impact on one or more racial or ethnic groups. For example, favoring senior affordable complexes over family complexes may adversely impact persons of color, who are much less likely to reside in senior complexes (identified as “other multifamily” in the table below).

**Figure VI-42.
Racial and Ethnic
Distribution of
Beneficiaries of
Publicly
Supported
Housing, HOME
Consortia, 2017**

	HOME Consortia			
	White	Black	Hispanic	Asian
Type of Assistance				
Public Housing	71%	18%	2%	9%
Project-based Section 8	88%	9%	1%	1%
Other multifamily	98%	0%	1%	0%
Section 8 vouchers	82%	13%	2%	2%

Source:
HUD AFFH data and mapping
tool.

Location of publicly supported housing. The following figure shows the number of publicly supported units in Cumberland County, the types of households those units target (if known), and the distribution by bedrooms. The examination of units by targeted and population and bedroom size helps identify where inequities exist in community access, often due to bias against families with children or persons with disabilities. In general, affordable elderly developments have less community resistance.

Overall, the county has approximately 8,500 units that are affordable due to federal, state, and local subsidies. Of those units designated for specific household groups, 37% are family units, 37% are elderly-only units, 24% are for elderly or persons with disabilities, and 2% are persons with disabilities only,

By bedroom size, 65% of all units are one bedroom, 25% are two bedrooms, and 11% are three bedrooms. Family designated units appropriately have a larger share of units with multiple bedrooms.

Figure VI-43.
Publicly Supported Housing, by Targeting and Bedrooms, Cumberland County, 2022

Targeting	No.	%	% 1 bed	% 2 bed	% 3 bed
Elderly or Disabled	1,395	24%	83%	15%	1%
Elderly only	2,194	37%	91%	9%	0%
Disabled only	128	2%	88%	12%	0%
Family	2,170	37%	31%	43%	26%
Unknown/Untargeted	2,620				
All Units	8,507		65%	25%	11%

Note: Includes LIHTC, Project-based Section 8, HUD insurance/loan guarantees, federal block grants.

Source: National Preservation Database.

Figure VI-44 shows the distribution of publicly supported units among jurisdictions. Jurisdictions with 0 units do not have any units listed in the publicly supported housing database. It's important to note that the database does not capture "naturally occurring affordable housing"—or NOAH—which are market rate units that are affordable without public subsidies. Many of these communities may have NOAH units that accommodate lower income families and households. NOAH, however, does not carry public subsidies that ensure longer term occupancy, making lower income families occupying NOAH typically more vulnerable to displacement.

Portland contains 58% of all of the county's publicly supported units; this compares to 23% of the county's overall population that lives in Portland. Westbrook also has a larger share of publicly supported units than its share of the county population (15% of units v. 7% population), while South Portland's is similar.

Family units are most prevalent in Bridgton, Freeport, Portland, South Portland, and Westbrook.

Figure VI-44.
Publicly Supported Housing, by Jurisdiction and Targeting, 2022

Jurisdiction	Publicly Supported Units		County Population	Unit Targeting	
	No.	% of All Units	Share of Population	% Elderly or Disabled	% Family
Baldwin	0	0%	1%	N/A	N/A
Bridgton	126	1%	2%	35%	65%
Brunswick	315	4%	7%	89%	11%
Cape Elizabeth	0	0%	3%	N/A	N/A
Casco	0	0%	1%	N/A	N/A
Chebeague Island	0	0%	0%	N/A	N/A
Cumberland	38	0%	3%	100%	0%
Falmouth	145	2%	4%	75%	25%
Freeport	178	2%	3%	54%	46%
Gorham	136	2%	6%	100%	0%
Gray	31	0%	3%	100%	0%
Harpswell	0	0%	2%	N/A	N/A
Harrison	0	0%	1%	N/A	N/A
Long Island	0	0%	0%	N/A	N/A
Naples	20	0%	1%	100%	0%
New Gloucester	0	0%	2%	N/A	N/A
North Yarmouth	0	0%	1%	N/A	N/A
Portland	4,893	58%	23%	61%	39%
Pownal	0	0%	1%	N/A	N/A
Raymond	24	0%	1%	100%	0%
Scarborough	92	1%	7%	100%	0%
Sebago	0	0%	1%	N/A	N/A
South Portland	879	10%	9%	55%	45%
Standish	62	1%	3%	100%	0%
Westbrook	1,311	15%	7%	41%	59%
Windham	200	2%	6%	100%	0%
Yarmouth	57	1%	3%	100%	0%
Total Units	8,507	100%	100%		

Note: Includes LIHTC, Project-based Section 8, HUD insurance/loan guarantees, federal block grants.

Source: National Preservation Database.

The analysis in Section IV that compares the shares of low incomes households with households overall (Figures IV-23a through IV-23e) showed that Portland and Westbrook have proportionately higher shares of low income families. The exercise above indicates that this is at least partially due to the presence of publicly supported housing for families.

Figure VI-45 takes this exercise a step further by comparing the distribution of family-designated publicly supported units to “quality seats” in the jurisdictions’ school districts. For this exercise, “quality seats” are defined as the number of students who meet or exceed state proficiency standards on English language tests.

There is a significant mismatch between where quality seats are located and where publicly supported housing designated for families are located. This exercise reveals that many jurisdictions are limiting access to quality education for low income families through their lack of publicly subsidized housing for families.

**Figure VI-45.
Publicly
Subsidized Family
Units v. School
Quality Seats**

Note:

Quality seats are defined as the number of students that meet or exceed state proficiency in English language tests.

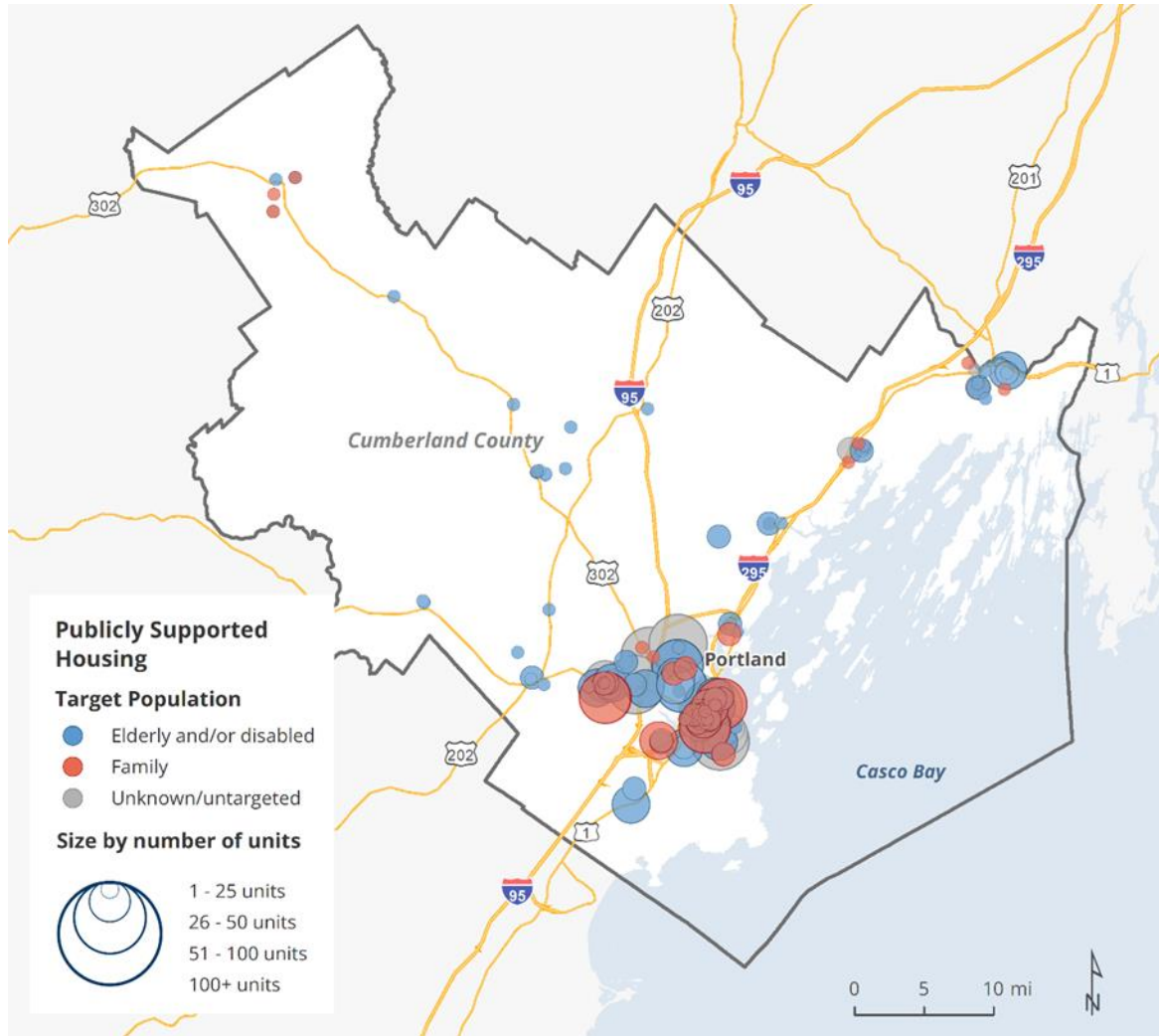
Source:

National Preservation Database and Root Policy Research.

Jurisdiction School District	Distribution of Quality Seats	Distribution of Publicly Supported Family Units
Bridgton, Casco, Naples	3%	3%
Brunswick	5%	1%
Cape Elizabeth	4%	0%
Cumberland	6%	0%
Falmouth	6%	2%
Freeport, Pownal	5%	3%
Gorham	7%	0%
Harpswell	5%	0%
Harrison	5%	0%
New Gloucester	4%	0%
Portland	14%	60%
Scarborough	9%	0%
South Portland	6%	9%
Standish	6%	0%
Westbrook	4%	22%
Windham	7%	0%
Yarmouth	5%	0%
Total	100%	100%

Figure VI-46 shows the location of publicly subsidized housing captured in the National Preservation Database geographically. This distribution is strikingly concentrated in the Portland-South Portland area—particularly family housing and developments with 100 units and more.

Figure VI-46.
Publicly Supported Housing



Source: National Preservation Database.

It is important to note that a significant barrier to an equitable distribution of affordable housing in high opportunity areas is lack of supportive services. The very limited amount of funding available for supportive services within housing—except for housing that serves persons who are homeless—incentivizes housing providers who serve the lowest income residents and residents experiencing or at-risk of homelessness to locate developments in urban areas where services are readily available—usually the city core.

Public Housing Policies and Procedures

The final section of this chapter reviews the policies of the public housing authorities (PHAs) that operate in the region.

Portland Housing Authority. The Portland Housing Authority owns and manages about 65% of the public housing in the HOME Consortia based on HUD data. According to the Housing Authority's most recent community impact analysis, the organization provides housing to more than 6,000 individuals and, through the Housing Choice Voucher program, provides rental assistance to approximately 1,800 households.

Public housing and other multifamily housing owned and operated by the Housing Authority serves families and elderly equally, with about 600 units each. The properties are a mix of “plexes,” small multifamily structures, and moderately sized multifamily complexes—the largest with 200 units.

As shown in the map in Figure VI-46 above, the vast majority of the county's units are located within the city core, and the Portland Housing Authority serves many of the lowest income residents though its public and multifamily housing located in this area. The areas with the highest concentrations of public housing are also those with higher rates of poverty (Figures IV-24 and IV-25), including the East End and East Bayside areas and one Census tract in central Westbrook. In these neighborhoods, between one-quarter and one-third of residents live below the poverty line. That said, poverty, even in higher poverty neighborhoods, is generally low compared to other larger metro areas. The location of public housing and deeply affordable units in areas with relatively high poverty is related to the history of public housing development in the U.S., which led to significant concentrations of low income tenants, as well as the lack of deeply affordable housing for families in the broader county.

In its 2022 Draft Annual Plan, the Portland Housing Authority discusses how it will Affirmatively Further Fair Housing (AFFH). Those efforts include:

- **Advertising and outreach**—in addition to posting the availability of vouchers and public housing through newspapers of general circulation, the housing authority uses news media, public service announcements, human service agencies, and service and employment support organizations.
- **Informing and educating**—the Housing Authority commits to providing clients with Equal Housing Opportunity materials and information on resource if they feel they have faced discrimination at intake and briefings and meetings. This is done through providing HUD discrimination forms and referrals to Pine Tree Legal Assistance, the Maine Equal Justice Project, Main Disability Rights, and the Maine Human Rights Commission.

- **Partnerships**— the Housing Authority lists Pine Tree Legal Assistance and similar advocacy organizations as those with which the Housing Authority has working relations to respond to tenants concerns and needs.
- **Accessibility accommodations**—the Housing Authority commits to providing equal access to programs and services for persons with disabilities. The offices have physical accessibility accommodations, and the Housing Authority works with Pine Tree Society, a language line, and refugee services to provide other accommodations. The Housing Authority also affords program administrators the opportunity to meet offsite with tenants who require such accommodations.
- **Staff training**—Staff are trained on how to respond to reasonable accommodation requests, LEP and requests for interpretation services, domestic violence and the Violence Against Women’s Act, and fair housing.

The Plan also details how the Housing Authority has updated its Admissions and Occupancy Policy to be current, including clarifying that the Fair Housing Act protects against discrimination on the basis of sexual orientation and gender identity (covered under the sex protected class); ensuring that persons with disabilities are provided with accessible units when they become available and are not occupying such a unit; ensuring that tenants have fair access to remote hearings (accessibility features, advance training if needed); and clarifying that for language access accommodations, if interpreters are chosen by families they are not minors.

A review of the current policies and procedures found no fair housing concerns. The Housing Authority’s webpage could be strengthened by providing a resource for non-English readers and speakers who need assistance completing an application for housing; currently, those are only available in English in a downloadable format.

South Portland Housing Authority. The South Portland Housing Authority (SPHA) is the next largest in the region. It owns and/or manages more than 600 units of scattered site housing in the City of South Portland. Of those, 346 are public housing units available to elderly, persons with disabilities, and families. An additional development of 42 units also serves a broad set of household types. The remaining complexes are age-or disability-restricted. SPHA also administers around 400 Housing Choice Vouchers.

SPHA’s website should better accommodate non-English readers or speakers; none of the pages contained a Translate feature. The links to access reasonable accommodations forms were broken when the website was visited.

Other Housing Authorities. Additional housing authorities operating in the county include:

- **Brunswick Housing Authority**—this housing authority manages five properties with a total of 215 units, three of which are senior housing, The Housing Authority also

administers the Housing Choice Voucher program in Brunswick, Harpswell, West Bath, Bath, Bowdoin, Bowdoinham, Durham, Freeport, and Topsham. The Brunswick Housing Authority's website has a Helpful Links & Resources section, including fair housing resources, on the home page. It would be helpful if that page provided a "Translate" feature for non-English readers.

- **Westbrook Housing**—this housing authority manages 12 properties with a total of 688 units. Of these, 93% are senior housing developments. The Housing Authority also administers 1,011 vouchers, 29% of which are project based. Westbrook Housing has strong goals to improve the accessibility and quality of its aging public housing stock, primarily through conversion through the Rental Assistance Demonstration (RAD) program. The Housing Authority aims to make 20% of their new units accessible and the balance adaptable. The Housing Authority will relocate those with accommodation needs to accessible units when they become available. Westbrook Housing is also prioritizing housing for families with larger bedroom sizes to better meet market needs.

Westbrook Housing's website is easy to navigate and very client-friendly. It could be strengthened with a "Translate" button on the home page and providing a resource for non-English readers and speakers who need assistance completing an application for housing; currently, those are only available in English in a downloadable format.

The resident survey and stakeholder focus groups provided additional information on the unique challenges faced by low income residents who seek or occupy publicly assisted housing.

Challenges faced by voucher holders.

- The most striking finding in the resident survey analysis was that nearly all voucher holders expressed difficulty finding a landlord that accepts a voucher: 90% of voucher holders represented by the survey find a landlord that accepts a housing voucher to be "difficult" or "very difficult."
- Voucher holders represented by the survey also reported that landlords continue to refuse to rent to voucher holders, despite the state's law that includes residents receiving public assistance as a protected class: 68% of respondents identified "landlords have a policy of not renting to voucher holders" as the main barrier to voucher utilization.
- 44% of voucher holders represented in the resident survey said they need more time to find a unit before the voucher expires.
- Another 44% of voucher holders said they have trouble finding information about which landlords will accept Section 8.
- These challenges were similar across races and ethnicities.

- Stakeholders working in publicly assisted housing reiterated these concerns, lamenting the squeeze on housing inventory caused by conversion of properties to short term rentals. There is no market incentive for landlords to serve low income renters. Some will entertain renting to 51-80% AMI renters; landlords are less apt to rent to <50% AMI renters.

Challenges faced by persons with disabilities.

- Residents with disabilities responding to the resident survey said that their greatest accessibility need is for onsite services to help with mental health challenges (29% expressed this need). This was followed by accessibility improvements to bathrooms (26%) and service or emotional support animal allowed (19%). As discussed above, the region's public housing authorities have policies in place to move persons with disabilities into accessible units and must accommodate service animals; as such, these are likely mostly private sector challenges.
- Onsite mental health care provision is an unmet area of need by both public and private sector housing providers. This need was also identified by stakeholders, particularly the need to expand, strengthen, and ensure the quality of recovery centers specializing in treatment from substance abuse challenges. The past dismantling of the supportive services structure, coupled with a growth in opioid drug use, exacerbated service gaps.

Challenges faced by low income renters in general.

- Lack of rental housing inventory for voucher holders is a major challenge. The very limited inventory marginalizes access to housing for low income households, particularly African American/Black households and refugees, who are more likely to rely on vouchers to meet rent.
- Community resistance to any type of new development—including by planning commissioners—is the largest barrier to addressing housing needs. Many residents do not appreciate the needs of people who are not like them, and they continue to push the model of preservation of single family detached homes. This occurs even if comprehensive plans have laid out a different, more efficient and cost effective, vision of growth.
- The lack of a limit on applications accepted by landlords creates a strain on low income people who often must apply for units many times before they find one that will accept a voucher. Landlords are financially incentivized to accept applications from applicants that aren't interested in without such a cap.

SECTION VII.

FAIR HOUSING ENVIRONMENT

SECTION VII.

Fair Housing Environment

This section examines the fair housing environment in Cumberland County. The contents of the section include:

- A review of state fair housing laws and enforcement;
- An analysis of fair housing complaints, as well as charges or letters of findings from HUD and legal cases, to assess trends in fair housing violations; and
- An overview of fair housing resources.

Federal and State Fair Housing Laws and Enforcement

The Federal Fair Housing Act (FHA), passed in 1968 and amended in 1988, prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status, and disability.¹

The protection based on sex was recently interpreted to include gender identification and sexual orientation, as a result of the June 2020 U.S. Supreme Court decision in the *Bostock v. Clayton County* case. In response to the *Bostock* case, and Executive Order 13988, HUD announced that it would administer and enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity.

The FHA covers most types of housing transactions including rental housing, home sales, mortgage and home improvement lending, as well as policies and practices that determine the placement of residential housing (e.g., land use and zoning regulations).

Excluded from the FHA are owner-occupied buildings with no more than four units, single family housing units sold or rented without the use of a real estate agent or broker, housing operated by organizations and private clubs that limit occupancy to members, and housing for older persons.²

State and local laws. States or local governments may enact fair housing laws that extend protection to other groups—or are more limited in nature. Similar to the State of

¹ For the purposes of this report, the acronym FHA refers to both the Fair Housing Act of 1968 and the amendments from 1988.

² “How Much Do We Know? Public Awareness of the Nation’s Fair Housing Laws”, The U.S. Department of Housing and Urban Development, Office of Policy and Research, April 2002.

Maine’s anti-discrimination law (discussed below), the City of South Portland passed a housing security ordinance that goes beyond the protections of the federal Fair Housing Act, prohibiting discrimination on the basis of race, color, religion, sex, sexual orientation, familial status, ancestry, national origin, age, physical or mental disability, and receipt of public assistance.³

States with laws that have the same or exceed the protections in the federal FHA are deemed “substantially equivalent.” Thirty-seven states in the U.S. have substantially equivalent fair housing laws, which enables HUD to refer complaints of housing discrimination to state agencies for investigation. HUD reimburses state agencies for this work. An advantage of state-level investigation is that residents have a local resource for fair housing investigation; many state agencies maintain regional offices.

The Maine Human Rights Act is the state’s anti-discrimination law. Per the Human Rights Commission, the Act “prohibits discrimination on the basis of protected class in employment, housing, places of public accommodation, education, and extension of credit.”⁴ For housing, the Act prohibits discrimination on the basis of race, color, ancestry, sex, sexual orientation (which includes gender identity and expression), physical or mental disability, religion, familial status, and receipt of public assistance.

The State of Maine is a substantially equivalent state. The state’s fair housing law exceeds the protections in the federal FHA. Similar to the federal FHA, the Maine Human Rights Act covers most housing, with the exception of non-commercial rental housing owned and operated by a religious group, a two-unit dwelling where the owner occupies one of the units, and owner-occupied single-family homes with no more than four rooms rented.

Neighboring states, with the exception of New Hampshire, exceed FHA in their protections:

- Connecticut has broader protections than the FHA. In addition to the coverage provided under the FHA, Connecticut offers additional protections of ancestry, marital status, age (except minors), sexual orientation, gender identity or expression, legal source of income, and veteran status.
- Rhode Island also has broader protections than the FHA, which include age (18 years or older), marital status, status as victim of domestic abuse, housing status⁵, military status, and lawful source of income.

³ https://www.southportland.org/files/5216/5470/6762/CH_12_Housing.pdf

⁴ <https://www.maine.gov/mhrc/about>

⁵ The Rhode Island Commission for Human Rights defines “housing status” as the status of having or not having a fixed or regular residence, including the status of living on the streets or in a homeless shelter or similar temporary residence.

- Vermont offers additional protections of marital status, age, sexual orientation, gender identity, receipt of public assistance, and victims of abuse.
- Massachusetts offers protections for ancestry, age, sexual harassment, sexual orientation, marital status, veteran status, and public assistance.

Fair housing inquiry and complaint process. Cumberland County residents who feel that they might have experienced a violation of the FHA can contact one or more of the following organizations:

- HUD’s Office of Fair Housing and Opportunity (FHEO)—to file a complaint based on federal FHA protections;
- Maine State Housing Authority (MaineHousing)—to inquire about fair housing rights and receive assistance with filing complaints;
- Maine Human Rights Commission (MHRC)—to file a complaint based on state fair housing protections.
- Pine Tree Legal Assistance—to receive help with evictions, foreclosures, and fair housing discrimination.

Cumberland County does not enforce fair housing law and would refer complaints to the appropriate service provider. Tenants or those wishing to pursue a complaint would be referred to Pine Tree Legal Assistance or the Maine Human Rights Commission and/or to HUD’s toll-free Fair Housing line, while providers would be referred to either a HUD/FHEO specialist or to the housing hotline to determine an appropriate referral.

Cumberland County also maintains a page on its website dedicated to fair housing, <https://www.cumberlandcounty.org/182/Fair-Housing>.

Complaints filed with HUD. Housing discrimination complaints may be filed online at [HUD Form 903 Complaint](#). Residents may also call HUD toll free at 1-800-669-9777 (FHEO in Washington D.C.), 1-800-877-8339 (TDD line for hearing impaired), or 1-800-827-5005 (TTY: 617-565-5453) (Boston Fair Housing Regional Office, which serves Cumberland County residents).

According to HUD, when a complaint is received, HUD will notify the person who filed the complaint along with the alleged violator and allow that person to submit a response. The complaint will then be investigated to determine whether there has been a violation of the FHA.

A complaint may be resolved in a number of ways. First, HUD is required to try to reach an agreement between the two parties involved. A conciliation agreement must protect the filer of the complaint and public interest. If an agreement is signed, HUD will take no further action unless the agreement has been breached.

If during the investigative, review, and legal process HUD finds that discrimination has occurred, the case will be heard in an administrative hearing within 120 days, unless either party prefers the case to be heard in federal district court.

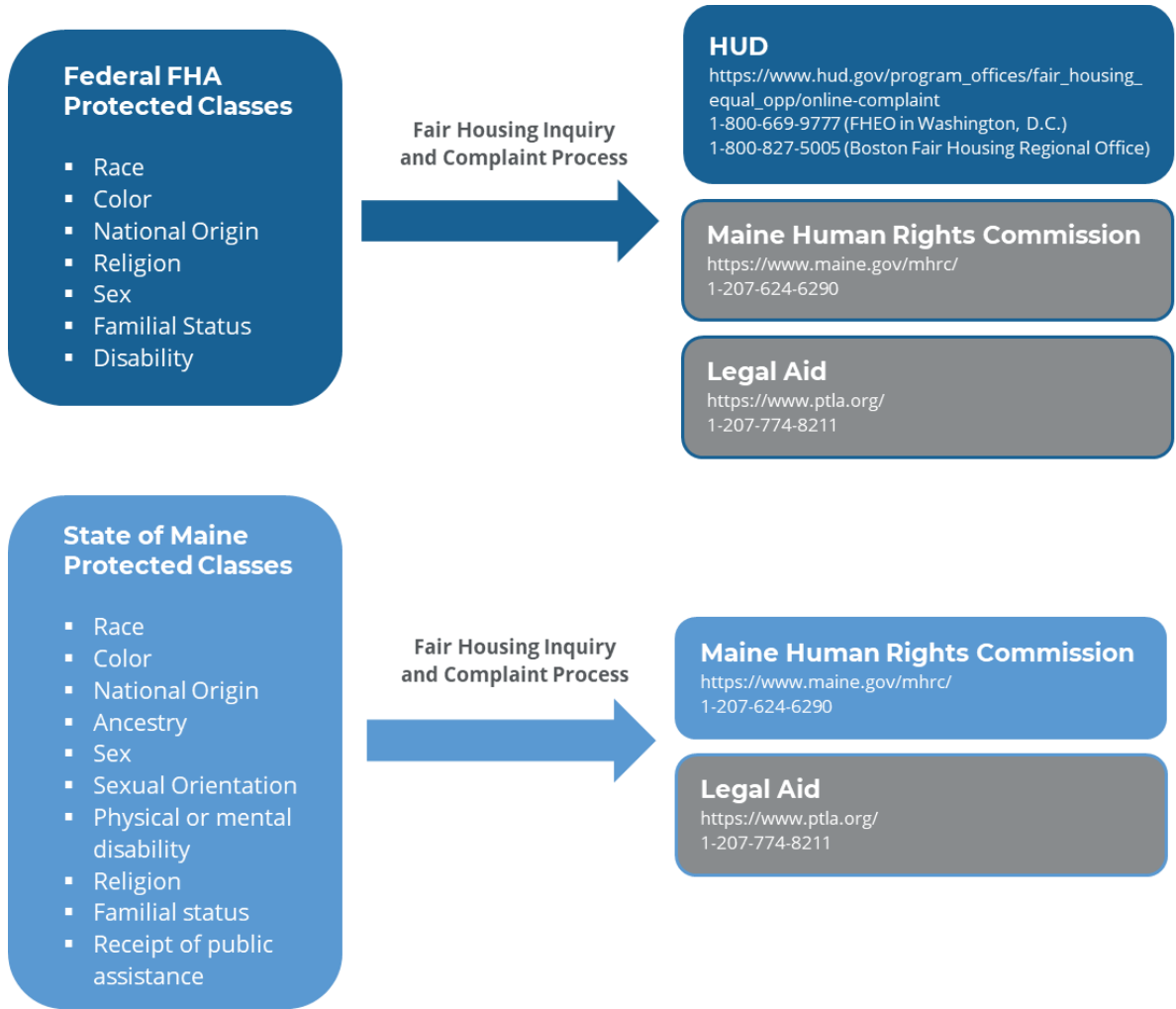
Complaints filed with the State of Maine. The Maine Human Rights Commission enforces the State of Maine’s employment and housing anti-discrimination laws. Complaints can be filed online (<https://www.maine.gov/mhrc/file>), by phone, and through regular mail or email. MHRC is a Fair Housing Assistance Program Recipient, which means HUD has determined it administers fair housing laws that are substantially equivalent to the Fair Housing Act. MHRC receives funding from HUD to administer these laws. The Maine Housing Rights Commission is the only designated substantially equivalent agency in the state of Maine.

MHRC provides a [comprehensive resource](#) on its website for complainants once their complaint has been filed with the Commission. Additionally, for complainants who want to settle or avoid litigation costs, MHRC’s Third Party Neutral Mediation Program provides effective mediation services at a below market rate fee. More information on the program can be found online (<https://www.maine.gov/mhrc/programs-resources/mediation>).

Complaints filed with local organizations. Pine Street Legal Assistance is a nonprofit legal firm assisting low income Mainers with a variety of legal matters. Housing services include assistance with evictions, homeowners rights, homelessness services, foreclosures, mobile home contracts, property taxes, tenant rights, and fair housing. The types of cases accepted are based on local capacity and program priorities, which are based on funding. More information is available online at <https://www.ptla.org/>.

Figure VII-1 summarizes fair housing protections and enforcement of fair housing laws.

**Figure VII-1.
Fair Housing Protections and Fair Housing Inquiry and Complaint Taking
Organizations, Federal FHA and State of Maine**



Source: Root Policy Research

Fair Housing Complaint Trends

Between January 2017 and December 2021, 68 fair housing complaints⁶ were filed by Cumberland County residents. The City of Portland accounted for over half of all fair housing complaints between 2017-2021, followed by South Portland, Brunswick, and Scarborough (Figure VII-2). These cities and towns account for 70 percent of all fair housing complaints.

**Figure VII-2.
Number and
Percentage of Fair
Housing Complaints
by City/Town,
Cumberland
County, January
2017 to December
2021**

City/Town	Number of Complaints	Percentage of Complaints
Portland	35	51%
South Portland	8	12%
Brunswick	7	10%
Scarborough	5	7%
Westbrook	3	4%
Freeport	2	3%
Yarmouth	2	3%
Bridgton	1	1%
Casco	1	1%
Cumberland	1	1%
Falmouth	1	1%
Naples	1	1%
Standish	1	1%
Cumberland County	68	100%

Note:

No complaints were filed for Baldwin, Cape Elizabeth, Chebeague Island, Gorham, Gray, Harpswell, Harrison, Long Island, New Gloucester, North Yarmouth, Pownal, Raymond, Sebago, and Windham.

Source:

U.S. Department of HUD Complaint Responsive Records, 2017 – 2021.

Basis of complaints. Figure VII-3 shows the percent of complaints by basis.⁷ Over one third of all fair housing complaints were based on disability (34%). This is significantly lower than the national average (55%).⁸ Retaliation and race represented the next greatest proportions (17% and 15%, respectively) in Cumberland County.

In the 2010 Analysis of Impediments for Cumberland County, no data on HUD-filed fair housing complaints is provided. However, the AI does include data on housing-related

⁶ While 68 fair housing complaints were filed between January 2017 and December 2021, multiple complaints included more than one reason (e.g. base) for their complaint. As a result, in several of the figures below, the number of responses is 123.

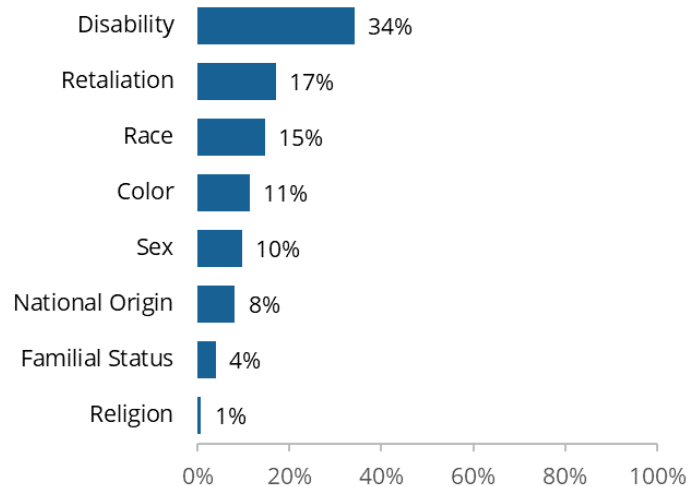
⁷ Complaints may have more than one basis.

⁸ [National Fair Housing Alliance, 2021 Fair Housing Trends Report](#)

discrimination cases filed with the Maine Human Rights Commission (MHRC) from July 2004 to June 2009. Forty eight cases were filed during that time period, with the greatest share filed on the basis of disability (50%). Source of income and race represented the next greatest proportions (19% and 8%, respectively).

Additionally, Cumberland County and York County completed a joint Analysis of Impediments to Fair Housing (AI) report in 2013 as part of the work for Sustain Southern Maine, a project aimed at stimulating more integrated regional planning to guide state, metropolitan, and local investments in land use, transportation and housing. Using MHRC data from 2010 and 2012, fair housing complaints made on the basis of disability made up a third or more of complaints. For those cases settled by MHRC between 2010-2012, “the most frequent complaints were about disability, race/religion/national origin, and family status.”⁹

**Figure VII-3.
Basis of Filed HUD
Complaints by Year,
Cumberland
County, January
2017 to December
2021**



Note:

HUD uses “sex” to refer to gender discrimination. n=123.

Source:

U.S. Department of HUD Complaint Responsive Records, 2017 – 2021.

Figure VII-4a shows the basis of complaints by year. Complaints based on disability accounted for over 40% of all complaints in three out of the five years. The next greatest proportion of complaints, those based on retaliation, peaked in 2018 at 25% of total complaints. Complaints on the basis of race and color increased each year between 2017 and 2020 (peaking at 23% and 19% in 2020). In 2021, the proportion of complaints dropped to 10% and 6% of all complaints, respectively.

⁹ 2013 York and Cumberland County Regional Analysis of Impediments to Fair Housing, page 55.

Figure VII-4a.
Percent and Basis of Filed HUD Complaints by Year, Cumberland County,
January 2017 to December 2021

	2017	2018	2019	2020	2021	All Years
Disability	45%	33%	40%	16%	42%	34%
Retaliation	18%	25%	7%	16%	16%	17%
Race	9%	13%	20%	23%	10%	15%
Color	5%	13%	13%	19%	6%	11%
Sex	5%	8%	7%	13%	13%	10%
National Origin	9%	4%	13%	10%	6%	8%
Familial Status	5%	4%	0%	3%	6%	4%
Religion	5%	0%	0%	0%	0%	1%

Note: n=123. HUD uses "sex" to refer to gender discrimination.

Source: U.S. Department of HUD Complaint Responsive Records, 2017 - 2021.

Figure VII-4b presents the number of complaints by type by year.

Figure VII-4b.
Number and Basis of Filed HUD Complaints by Year, Cumberland County, January 2017 to December 2021

	2017	2018	2019	2020	2021	All Years
Disability	10	8	6	5	13	42
Retaliation	4	6	1	5	5	21
Race	2	3	3	7	3	18
Color	1	3	2	6	2	14
Sex	1	2	1	4	4	12
National Origin	2	1	2	3	2	10
Familial Status	1	1	0	1	2	5
Religion	1	0	0	0	0	1

Note: n=123.

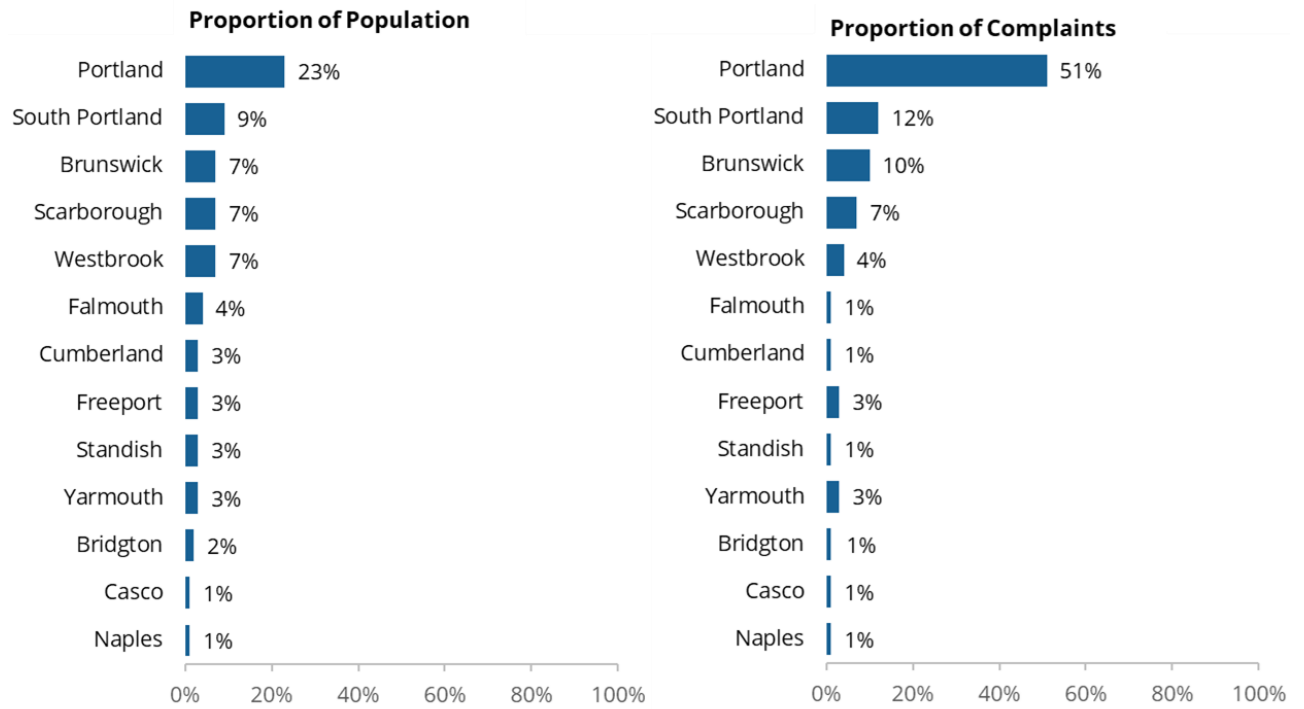
Source: U.S. Department of HUD Complaint Responsive Records, 2017 – 2021

Geographic distribution. Figure VII-5 compares the proportion of population and complaints by county. Portland is vastly overrepresented in the proportion of fair housing complaints relative to their share of the county population, accounting for more than half of all complaints while only accounting for 23% of the population.

South Portland and Brunswick are also overrepresented when comparing the proportion of complaints to population, although not as significantly as Portland (9% and 7% of the population, 12% and 10% of complaints, respectively).

Westbrook and Falmouth are most underrepresented when compared to their share of complaints (7% and 4% of the population, 4% and 1% of complaints, respectively).

Figure VII-5.
Proportion of Population and Complaints by Jurisdiction, Cumberland
County, January 2017 to December 2021



Note: No complaints were filed for Baldwin, Cape Elizabeth, Chebeague Island, Fry Island, Gorham, Gray, Harpswell, Harrison, Long Island, New Gloucester, North Yarmouth, Pownal, Raymond, Sebago, and Windham.

Source: U.S. Department of HUD Complaint Responsive Records, 2016 – 2020; 2015-2019 ACS 5-Year Estimates.

Geographic variance in complaints by type. Complaints on the basis of disability account for the majority of complaints for most towns or cities in Cumberland County (Figure VII-6). Of the ten towns or cities with a fair housing complaint between 2017 and 2021, each one had at least one complaint filed on the basis of disability. For the towns/cities with the most complaints overall, including Portland, South Portland, and Scarborough, at least 60% of their complaints were on the basis of disability. Of the seven complaints filed in Brunswick, nearly half were on the basis of disability (43%).

**Figure VII-6.
Disability Based
Complaint
Proportion,
Cumberland
County, January
2017 to December
2021**

Note:

Total Complaints include the numbers of multiple complaints per case.

Source:

U.S. Department of HUD Complaint Responsive Records, 2017 – 2021.

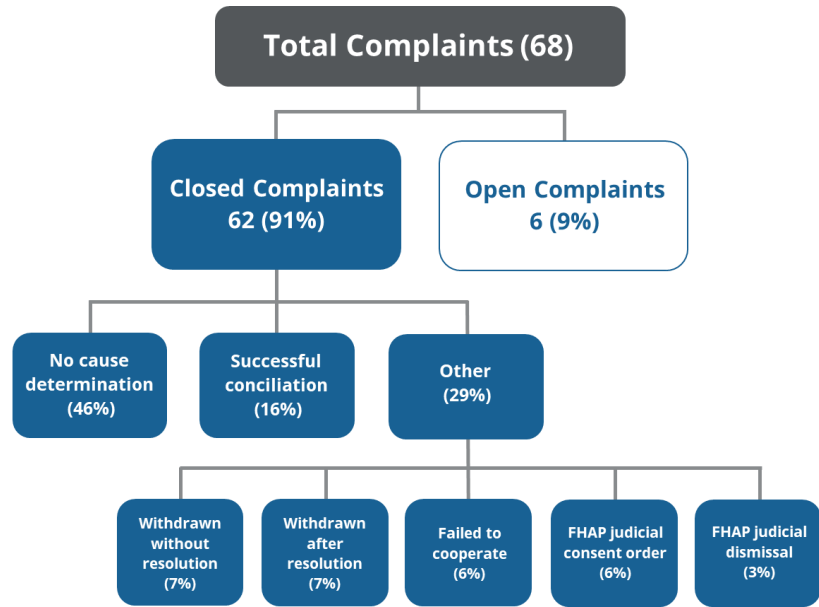
City/Town	Disability Based Complaints	Total Complaints	Percent
Portland	23	35	66%
South Portland	5	8	63%
Brunswick	3	7	43%
Scarborough	3	5	60%
Westbrook	2	3	67%
Freeport	2	2	100%
Yarmouth	1	2	50%
Casco	1	1	100%
Falmouth	1	1	100%
Standish	1	1	100%
Cumberland County	42	123	34%

Issues by complaints. For each complaint filed with HUD, the complainant is allowed to assign specific issues that describe the alleged fair housing violation. Of the 68 cases filed with HUD between 2017-2021, 232 specific issues were identified. The most common issues identified by complainants included discriminatory terms, conditions, privileges, or services and facilities (17% of all issues identified), other discriminatory acts (16%), failure to make a reasonable accommodation (13%), discrimination in terms, conditions, privileges relating to a rental (13%), and discriminatory acts under Section 818 (coercion, etc.) (11%).

Resolution of complaints. Figure VII-8 shows the resolution of closed complaints between 2017 and 2021. Of the 68 complaints during this time period, 91% have been closed and 9% remain open.

Pertaining to closed complaints, nearly half (46%) were closed due to no cause determination, which occurs when HUD investigators determine a lack of substantial evidence of a fair housing violation. Sixteen percent were successfully conciliated and closed, which occurs when the complainant and defendant agree on how to address the cause of the complaint. The remaining 29% of complaints were closed for a variety of reasons.

**Figure VII-7.
Resolution of Closed
Complaints,
Cumberland
County, January
2017 to December
2021**



Note:

Successful conciliation is a combination of: negotiated conciliation before determination of cause, successful conciliation agreement after cause finding, conciliation prior to cause finding, and successful mediation during or after investigation.

Source:

US Department of HUD Complaint Responsive Records, 2017 - 2021.

Hate crimes. The incidence of hate crimes and the prevalence of hate crime groups can be an indicator of discrimination concerns even though they do not directly link to housing discrimination. Designating a crime to be a hate crime is the responsibility of local agencies. If a local agency determines that a crime is based on race, religion, sexual orientation, ethnicity, national origin, or disability, the crime is included in the data. Note that the crimes included in the data represent only the crime, not convictions.

Hate crimes in Cumberland County. The Southern Poverty Law Center is a nonprofit organization dedicated to civil rights, fighting hate and seeking justice for the most vulnerable. As part of this mission, the law center monitors hate crime incidents and hate-based organizations. The county and characterization of hate crime groups by the Southern Poverty Law Center was compiled using hate group publications and websites, citizen and law enforcement reports, field sources, and news reports.

Nationally, the SPLC tracked 733 hate groups across the U.S. in 2021; four hate groups were located in Maine. In 2017, there were three hate groups located in Maine and 954 hate groups nationally.

Fair housing environment – stakeholder perspectives. As further detailed in Section II, a survey was disseminated to ask residents about their perspective on housing discrimination in Cumberland County.

Overall, 16% of survey respondents reported experiencing discrimination when looking for housing in Cumberland County. Residents of color, along with low income precariously housed respondents, were most likely to say they experienced housing discrimination.

Nearly 80% of respondents said that discrimination had taken place in the last five years. These responses are evidence that most potential fair housing violations that occur in the county go unreported.

Based on responses from residents, a lack of awareness about fair housing resources, education, and enforcement appears to be pervasive throughout the county. Just over half of survey respondents reported they did not address their incident of housing discrimination because they weren't sure what to do. Nearly a quarter of respondents also did nothing in fear of retribution (being evicted or harassed).

Stakeholders described that new Mainers, people experiencing disabilities, and families with children are more likely to experience housing discrimination; however, many articulated that the discrimination they face is hard to prove and difficult to document. Stakeholders identified instances of discrimination based on national origin, pointing out that landlords routinely ignore maintenance and repair requests from immigrants. One stakeholder felt there "is a lot of discrimination [that occurs]...some landlords do not want to rent to new Mainers."

Stakeholders also noted instances of discrimination based on source of income. While source of income is not protected under the federal Fair Housing Act, receipt of public assistance is protected under the Maine Human Rights Act. Overall, stakeholders felt that fewer landlords are willing to accept both Section 8 and GA vouchers. One stakeholder noted that "unhoused people [with vouchers], particularly minorities, got rejected all the time." One stakeholder also pointed to economic discrimination faced by low income Mainers, articulating that requests for first and last month's rent, security deposits, and other administrative fees are major barriers to accessing housing. They added that households who struggle the most financially are those that are left with the fewest choices because the housing market is more likely to shut them out.

Fair Housing Legal Review

As part of this fair housing analysis, fair housing legal cases were reviewed to assess trends in Maine legal challenges and outcomes.

The cases described below come from the United States Department of Justice (DOJ) Housing and Civil Enforcement Cases Database.¹⁰ Since 2010, there have only been two fair housing legal cases in the state of Maine filed by the United States DOJ, one occurring in Cumberland County. No fair housing lawsuits have been filed by HUD regarding properties in Cumberland County since 2012.

Hand in Hand/Mano en Mano v. Town of Millbridge, Maine (National origin and familial status)

¹⁰ <https://www.justice.gov/crt/housing-cases-summary-page>

In 2009, the Town of Millbridge adopted a moratorium that stopped the development of a housing project for farmworkers and their families due to resident opposition. The plaintiff, Hand in Hand/Mano en Mano, a nonprofit that provides services to Hispanic residents in Washington County, alleged discrimination on the basis of national origin and familial status. The U.S. Department of Justice submitted an amicus brief in late 2009 to assist the Court in assessing the plaintiff's motion for a preliminary injunction but the case was settled in 2010 prior to the Court's ruling.

United States v. Ferrante (Sexual harassment)

In January 2013, the United States filed a complaint and consent order in United States v. Ferrante. Referred by Pine Tree Legal Assistance, the complaint alleged that Rudy Ferrante sexually harassed female tenants in Portland, in violation of the Fair Housing Act. The court entered an amended consent order in April of 2013, which imposed a \$15,000 civil penalty against Ferrante, required him to undertake fair housing training, instructed him to refrain from further discriminatory acts, and required him to provide a copy of the order to his employers.

Zammuto v. Brann, Maine Human Rights Commission (Disability, retaliation)

In 2015, the Maine Human Rights Commission (MHRC) ruled in favor of a tenant who alleged that her landlords had attempted to evict her for having a service dog and then retaliated against her for filing a fair housing complaint with MHRC.¹¹ Refusing to make a reasonable accommodation for a person experiencing a physical or mental disability is a violation of the Maine Human Rights Act, which includes refusing to allow a tenant the use of a service animal. The commission unanimously ruled in favor of both the discrimination and retaliation claims, which triggered a 90-day conciliation period where the parties could attempt to settle the case without going to court. The incidents took place in Norridgewock, Maine (Somerset County) and the complainant was represented by Pine Tree Legal Assistance.

¹¹ <https://www.pressherald.com/2015/01/26/rights-panel-upholds-findings-of-discrimination-retaliation/>

Fair Housing Resources

Several different organizations throughout Maine provide fair housing education and outreach and access to fair housing resources.

Fair housing education. The Maine State Housing Authority (MaineHousing) provides general information on fair housing, as well as resources related to disability rights, limited English proficiency, how to file a fair housing complaint, and advocacy groups and legal resources. MaineHousing also offers a free Fair Housing training program on its website (<https://www.mainehousing.org/fair-housing-training>). Recently, in 2019, MaineHousing also hosted a listening session for its partners to hear about housing discrimination issues occurring throughout the state and what could be done to address those issues.

The Maine Housing Rights Commission also routinely hosts fair housing workshops to help educate the public about fair housing law and to prevent discrimination in housing. Recently, MHRC hosted two fair housing trainings in April 2022 related to reasonable accommodations and assistance animals.

Pine Tree Legal Assistance provides comprehensive resources related to fair housing in a variety of different languages (<http://www.ptla.org/fair-housing>).

Cumberland County also maintains a page on its website dedicated to fair housing, <https://www.cumberlandcounty.org/182/Fair-Housing>. While the webpage does provide general information on fair housing and local resources, it could include a more robust overview of how to pursue a complaint, summaries of the Fair Housing Act and Maine's Human Rights Act, and a link to the county's most recent Analysis of Impediments to Fair Housing Report.

SECTION VIII.

ZONING AND LAND USE ANALYSIS

SECTION VIII.

Zoning and Land Use Analysis

This section builds upon the Disproportionate Housing Needs section by examining the link between housing choice and zoning and land use regulations. It begins with background on how zoning and land use decisions influence housing choice; summarizes the zoning and land use findings from previous AIs; examines how the participating jurisdictions' current zoning and land use regulations and decisions affect housing choice; and concludes with findings.

This section does not prescribe a “right way” to zone. Instead, it reviews the jurisdictions zoning regulations against best practices, and assesses if the jurisdictions' regulations could restrict housing choice. It also acknowledges that jurisdictions have varying contexts and different opportunities and constraints related to building a variety of housing types.

Why Zoning Matters

As housing affordability challenges have grown into what many are calling a national housing crisis, zoning and land use regulations have received more attention for their role in creating barriers to housing choice and failing to respond to housing market needs.

Discriminatory aspects of early zoning. Zoning, in its very early form, was inherently, and often blatantly, discriminatory—the most direct example being race-based zoning codes. In 1917, the U.S. Supreme Court made racial zoning illegal by overturning a racial zoning ordinance in Louisville, Kentucky (*Buchanan v. Warley*) on the grounds that it violated “freedom of contract” protections in the U.S. constitution. Many cities ignored the Supreme Court's decision and continued racial zoning practices or found other legally permissible ways to regulate neighborhood composition.

Another early practice that facilitated segregated communities was zoning based on use. This was called “Euclidean” zoning, named for Euclid, Ohio, the community that introduced this zoning. Euclidean zoning, which remains common today, divides land into ‘zones’ differentiated by use and form with, among other goals, the objective of protecting occupants of some zones, historically lower-density single-family zones, from uses believed to compromise health and safety. In 1926, the U.S. Supreme Court found that Euclid's zoning ordinance was allowed as part of the jurisdiction's police power—and, through the decision, promulgated the belief that segregating single family detached homes was necessary to “increase the safety and security of home life...prevent street accidents,

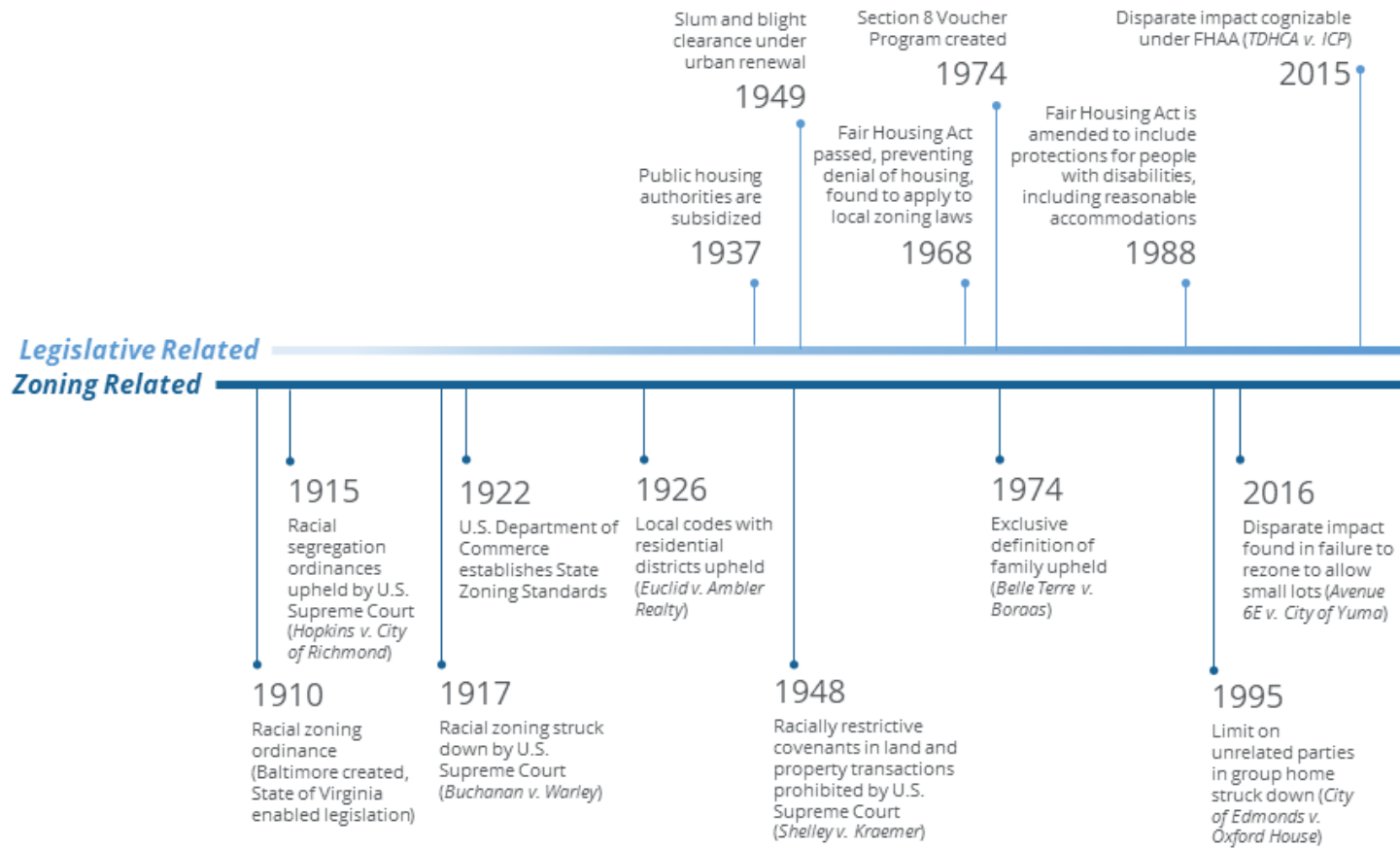
especially to children...preserve a more favorable environment in which to rear children, etc.”¹

The above exclusionary zoning practices are just some examples of the many zoning codes and practices that facilitated segregation. They also drove excluded residents—largely people of color—into neighborhoods with higher levels of pollutants, poor quality housing, and limited ownership opportunities. As outlined in Section IV of the report, the State of Maine lacked a history of legalized segregation but still took other avenues to establish segregatory housing patterns and discriminate against non-White and other ethnic groups.

Figure VIII-1 below provides a timeline of significant zoning decisions related to housing choice. It also includes legislative responses to expand housing choice. The figure reveals the piecemeal, often discriminatory, and reactionary responses that have characterized the housing landscape over the past 100 years.

¹ *Modern Family: Zoning and the Non-Nuclear Living Arrangement*, https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Zoning-Practice-2020-05.pdf

**Figure VIII-1.
Zoning Timeline**



Source: Root Policy Research.

Exclusionary zoning today². Zoning regulations no longer dictate where certain types of people may live other than in special circumstances like senior living communities, which are allowed under the Federal Fair Housing Act (FFHA). Zoning today regulates the structural environment, which typically means where residential development is allowed, the types of residential development allowed (single family, multifamily), the density of development, and the form or design of development.

Even if they do not contain direct discriminatory language, zoning codes and land use decisions can have a discriminatory effect on protected classes when they rely more heavily on certain types of housing than others. This most commonly occurs for multifamily rental housing: excluding multifamily housing from zoning districts can have a disparate impact on the protected classes who are mostly likely to be renters and have lower incomes. As such, residential zoning that limits the placement of housing can mimic past discriminatory zoning practices.

Exclusionary zoning generally employs land use regulations that restrict the types of housing that can be built in a particular area. This type of zoning is employed to constrain housing diversity and supply and ensure the area is inhabited by an idealized segment of the population—typically a married couple with children living in a suburban single family detached home. In many cases a version of this definition of the idealized family is still present in zoning ordinance definitions.

Public costs associated with exclusionary zoning include increased traffic congestion, persistent inter-generational poverty, and stunted economic growth. Exclusionary zoning increases the cost of entry into service-rich neighborhoods which often contain the highest-performing school districts, the best access to high-paying jobs, access to healthy food, and transportation alternatives. In this way, segregation is reinforced by limiting opportunities for low- and moderate-income residents to live in areas of opportunity.

Land use planning that embraces housing inclusivity is becoming more popular as communities recognize—and internalize—the public costs associated with exclusionary zoning. Inclusive planning is also being embraced to respond to market demand, recognizing that how people choose to live—e.g., renting longer, living in low maintenance homes—is changing.

Notable exclusionary zoning legal cases include:

Berenson v. Town of New Castle (1975) was an early case, stemming from a developer who wanted to build a condominium community and was denied due to lack of

² There is no one, agreed-upon, definition of exclusionary zoning, just as there is no magic set of zoning regulations that produce perfect inclusivity of housing choice and access to opportunity. Yet some practices are better than others, and some practices are so exclusive they have been found to be illegal. The courts have effectively determined what constitutes exclusionary behavior in zoning and land use regulations and decisions.

zoning for multifamily housing. This case introduced the idea that housing choice should be considered in zoning decisions. The court's decision was based on the premise that the "primary goal of a zoning ordinance must be to provide for the development of a balanced, cohesive community which will make efficient use of the town's land.... [I]n enacting a zoning ordinance, consideration must be given to regional [housing] needs and requirements.... There must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met."³

NAACP v. Town of Huntington (1988) resulted in a court-ordered rezoning of a parcel of land to accommodate multifamily development and a change in the town's zoning ordinance which only allowed multifamily development in an urban renewal area. The court concluded that the failure of the town to rezone a parcel to accommodate multifamily development has a "substantial adverse impact on minorities." This was based on an analysis of housing needs data that found a disproportionate proportion of African American/Black families had housing needs.

Under Huntington, a zoning code is presumptively exclusionary if it: (1) restricts multifamily or two-family housing to districts/neighborhoods with disproportionately large minority populations; or (2) disparately impacts minorities by restricting the development of housing types disproportionately used by minority residents.⁴

Avenue 6E Investments LLC v. the City of Yuma (2015). In this case, the court found that a denied rezoning request to allow smaller lots for construction of more affordable single family homes had a disparate impact on Hispanic families. This case was based on an analysis of Home Mortgage Disclosure Act and homes sales data, which showed that smaller lots produced single family homes at price points that were attainable to lower to moderate income Hispanic households.

In the end, it is in the best interest of communities to examine their zoning code and land use regulations frequently to ensure they do not create barriers to housing choice. This is appropriate not only to avoid legal challenges, but also to ensure economic and workforce diversity, and to keep current in a national market that is increasingly demanding creative solutions to housing pressures and expansion of housing choice.

³ N.J. Stat. Ann. Sections 52:27D-301 et seq. (2007).

⁴ Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926 (2d Cir. 1988)

Common zoning-related barriers to housing choice. Some of the key factors in land development codes that most commonly result in barriers to fair housing choice and reasonable accommodation for persons with disabilities include:

- **Dimensional standards.** Large minimum lots, minimum unit sizes, or excessive setbacks between structures or from streets that can increase development costs;
- **Limits on density.** Restriction on or prohibition of multifamily housing; low floor area ratios (FAR) for multifamily or mixed-use development; or low density requirements;
- **Use-specific standards.** Special site or operational requirements for group homes for persons with disabilities that are not required for other residences or groups;
- **Differences in quality and access to public services.** Additional requirements for specific developments (e.g., group homes or multifamily) to provide infrastructure or essential municipal services not required for other residences or dwelling units;
- **Definition of family and occupancy restrictions.** Definitions of family or occupancy limits that prohibit or limit the number of unrelated or unmarried persons in a household;
- **Procedures for development or zone change reviews.** Excessive or disparate review procedures, public hearing requirements, or noticing requirements for different housing types, housing for protected classes, or low-income housing;
- **Housing types.** Limits or prohibitions on alternative affordable housing options such as accessory dwelling units (ADUs), modular or manufactured homes, and mixed-use developments;
- **Growth restrictions.** Limits on residential growth. Some communities have instituted annual growth caps that limit how much housing can be built, including market rate units. Other communities allow some types of uses but constrain others—for example, allowing an exemption from a residential growth restriction for affordable senior housing but not affordable family housing. The collective limit on how much housing can be built throughout the county restricts overall supply and negatively impacts housing choice.
- **Spacing.** Minimum distance between group homes that are not required for other residences or groups and make development of group homes difficult;
- **Reasonable accommodations.** Regulations inhibiting modifications to housing for persons with disabilities or their ability to locate in certain neighborhoods; and
- **Code language.** Local land development codes and standards that are not aligned with federal and state regulations governing fair housing and reasonable accommodation.

Zoning best practices. Recognizing the exclusionary nature of many zoning ordinances, and to respond to the housing crisis, cities and counties are increasingly modifying land use codes to allow “gentle infill”—duplexes/triplexes, rowhomes, and Accessory Dwelling Units (ADUs)—in single family zones. Some jurisdictions are adopting “lifestyle neutral” approaches to zoning and land use to better align with changes in household preferences, life cycles, and aging residents.

Lawyer and planner Don Elliott published *A Better Way to Zone*, which contains ten principles for zoning that can apply to both urban and rural communities. The book focuses less on how cities should look but how they should operate. Several relate to expanding housing choice and are relevant for Cumberland County:

- 1) **Zone for middle income households**— include a broad range of mixed-use zoning districts and allow multifamily development across a wide variety of zoning districts. This practice also more effectively produces communities that support neighborhood-serving retail and commercial operations and small businesses by allowing the market to supply services near households
- 2) **Revise zoning ordinances to better promote attainable housing**—step away or revisit minimum lot sizes, minimum dwelling unit sizes, and maximum residential densities. Allow more flexibility in zone districts to accommodate the wide range of housing products that accommodate the “missing middle” — housing types such as duplexes, triplexes, fourplexes, cottage courts, and multiplexes.
- 3) **Implement dynamic development standards**—recognize that communities change over time and development codes need to allow communities to adopt and experiment with market innovations and accommodate changing housing preferences. Parking standards, for example, can vary based on use rates and existence of public parking lots in the area. In more traditionally zoned communities, it is most appropriate to “experiment” with dynamic zoning—which allows for more flexible development while still ensuring that resulting projects are not significantly out of scale or character with those around them— in mixed-use districts. As discussed above, these standards should be generous in application and allow multifamily residential housing.
- 4) **Revise group home definitions and ensure placement.** A best practice in the definition of group homes is to set the unrelated persons limit to what has been legally defensible, generally 12 unrelated persons, including staff. Group home residency must be broad enough to include the homeless, those with social, behavioral, or disciplinary problems, the elderly, those in hospice care, those avoiding domestic abuse, and/or disabled (which includes the frail, physically disabled, developmentally disabled, mentally ill, persons with HIV/AIDS, and recovering from alcohol or drug addiction). Group homes should be allowed in at least one, and preferably more, residential zoning districts. The unrelated persons

limit could be increased if the group home is to be located in a multifamily, commercial, mixed use or other district.

- 5) **Include clarifying definitions.** The definition of disability must include what the courts have qualified as disability; those in recovery and with HIV/AIDS are often left out of the definition. A best practice is to have as broad a definition as possible to avoid multiplying the list of group facilities in ways that confuse the public and policymakers.

Definitions of household and family, if included in the code, should be flexible enough to allow a range of household and family configurations, especially those needed to accommodate caregivers. Language should avoid prescribing the makeup of a family unit ("husband and wife"). A more progressive approach is to exclude definitions of household or family composition and focus on public health and safety factors.

Land Use Planning in Maine

The State Constitution of Maine, specifically Article VIII, Part Second, establishes municipal home rule and grants power to local municipalities “...to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.”⁵ More plainly, land use regulations at the state level largely control local land use planning tools available to municipalities throughout the state.⁶ As such, this section highlights several state-level land use policies that impact zoning ordinances, code enforcement practices, impact fees, regulation of manufactured and group homes, and protected classes.

Zoning ordinances. Maine Revised Statutes require that a local zoning ordinance be consistent with a comprehensive plan adopted by the municipal legislative body. Additionally, a zoning map articulating each zone must be adopted as part of the zoning ordinance. Public hearings are required before the adoption of any new zoning ordinance or map, as well as amending an existing zoning ordinance or map. The public must be notified of the public hearing at least 13 days prior to the scheduled date of the hearing.

The State also requires that any municipality that adopts a zoning ordinance must also establish a board of appeals. The board of appeals is allowed to grant variances to an applicant if the ordinance is found to cause an undue hardship to the applicant’s property. The statutes also permit municipalities to grant disability variances, which allow an owner of a dwelling to install equipment or construct structures necessary for the access to or egress from the dwelling by a person with a disability. Additionally, the statutes also permit municipalities to grant a disability variance to construct a place of storage for a noncommercial vehicle for a person with a permanent disability. Variances for setbacks for single family dwellings and dimensional standards are also allowed for municipalities to include in their zoning ordinances.

Code enforcement practices. Code enforcement is vital to minimizing health issues related to outdated rental inventory including asthma and lead poisoning. While code enforcement is a valuable tool to maintain health and safety, code enforcement programs that become targeted or discriminatory can become an issue under FHAA.⁷ For example, in the early 2000s, 16 current and former landlords who owned more than 100

⁵ <https://www.maine.gov/legis/const/#a8>

⁶ Regulations specific to planning and land use can be found in the [Maine Revised Statutes, Title 30-A, Chapter 187: Planning and Land Use Regulation](#).

⁷ *Magner v. Gallagher* argued, “Whether owners of rental properties may claim St. Paul city officials violated the Fair Housing Act by aggressively enforcing the City’s housing codes, which increased rental costs and reduced the supply of low-income housing whose renters are disproportionately African-American.” (<https://www.law.cornell.edu/supct/cert/10-1032>)

rental units in St. Paul Minnesota filed against the city claiming code enforcement practices on problem properties had a disparate impact on minorities.⁸

Related to the general enforcement of land use laws and ordinances, the Maine Revised Statutes require code enforcement officers to be certified by one of the following entities: the former State Planning Office, the Department of Economic and Community Development, Office of Community Development, or the Department of Public Safety. Additionally, code enforcement officers are authorized to enforce all applicable laws and ordinances related to Shoreland zoning, comprehensive planning and land use, internal plumbing, subsurface wastewater disposal, and building standards as specified in the respective state statutes. The State also allows for municipalities to authorize code enforcement officers to issue disability structures permits.

Impact fees. Maine Revised Statutes permit local municipalities to enact ordinances that require developers to construct capital improvements off site or pay impact fees in lieu of the construction. The impact fee must be reasonably related to the development's share of the cost of infrastructure improvements.

Manufactured housing. Maine Revised Statutes require that municipalities permit manufactured housing to be erected "...on individual house lots in a number of locations on undeveloped lots where single-family dwellings are allowed."⁹ The statutes also articulate that manufactured housing is subject to the same requirements as single-family dwellings. The code also specifies a number of requirements municipalities must address around dimensional standards, setbacks, road frontage, municipal road standards, buffering, and location of utilities related to mobile home parks.

Group homes. The Maine Revised Statutes require that municipal zoning ordinances consider all community living arrangements¹⁰, which include group homes, foster home, or intermediate care facility, of eight or fewer residents a single-family use of property for zoning purposes. As such, these residential facilities are not subject to conditions more restrictive than those imposed on residences occupied by related persons.

Protected classes. Maine's Human Rights Act makes it illegal to discriminate in residential housing on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, physical or mental disability, familial status, and receipt of public assistance. Protected classes under the federal FHAA include race, color, religion, national origin, sex

⁸ *Magner v. Gallagher*

⁹ <https://legislature.maine.gov/statutes/30-A/title30-Asec4358.html>

¹⁰ As defined in M.R.S. § 4357-A, Community living arrangements are housing facilities for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility. Disability has the same meaning as term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602.

(which includes sexual orientation and gender identity), familial status, and disability. Maine's protected classes are more extensive than federal protected classes due to the addition of ancestry and public assistance income.

Current zoning and land use issues in Maine. Spurred by its increasing need for housing, the State of Maine recently underwent a significant effort to explore how current land use and zoning regulations affect housing development. In June 2021, Governor Janet Mills signed a bill establishing the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions to better understand how current zoning and land use restrictions impact increasing housing opportunities throughout the state. The commission met throughout the rest of the year and delivered a report of its findings and recommendations in December 2021. These recommendations evolved into LD 2003, "An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions." The bill was signed into law by Governor Mills in April 2022. Highlights¹¹ of the bill include:

- Allowing at least one accessory dwelling unit (ADU) — attached or detached — by right on all single-family home lots. Also specifies that ADUs do not count towards a municipality's rate of growth ordinance;
- Allows up to two dwelling units per lot in all residential zones across the State. Municipalities need to allow up to four dwelling units per lot if the lot is in a designated growth area;
- Requires jurisdictions to allow more affordable housing at deeper and longer affordability. Creates density bonuses in some zoning districts for affordable housing developments; and
- Caps parking mandates to two spaces for every three units.

The bill also requires municipalities to "...ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act...and the Maine Human Rights Act to achieve the statewide or regional housing production goal."¹²

In essence, through this bill, the Maine Legislature puts into place the ability for local units of government to implement zoning best practices by allowing a diversity of housing types and densities, promoting flexible site standards, and limiting parking requirements.

¹¹ <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1489&item=9&snum=130>

¹² <https://legislature.maine.gov/bills/getPDF.asp?paper=HP1489&item=9&snum=130>

Outside of the state’s push to reform zoning and land use regulations to increase housing development, several Cumberland County jurisdictions are undertaking their own efforts to increase housing development and choice in their communities.

Current zoning and land use efforts in Cumberland County. Several communities in Cumberland County have undertaken recent efforts to update their current zoning and land use regulations to be better equipped to satisfy their community’s growing and changing needs. For example, in late 2017, the City of Portland launched [ReCode Portland](#), an effort to create a new and unified development code. With an emphasis on community input and feedback throughout the process, the primary objectives of the *Recode* project are to make the land use code more user-friendly align the code with the city’s Comprehensive Plan to help advance its goals, and ensure that the city’s diversity of needs, including housing, the working waterfront, climate resilience, and transportation, are being sufficiently met. The first phase of ReCode passed broad parking exemptions, and an expansive ADU ordinance that allows up to two ADUs per residential lot, with no parking requirements and a streamlined review process. Phase 2 is underway, evaluating Portland’s zoning for ways to increase housing creation city-wide, increase climate resilience, and build complete, walkable, transit-proximate neighborhoods.

More recently, in 2021, the City of South Portland commissioned a Housing Assessment and Strategy Report to identify significant needs to catalyze housing production in the city. The report offers a series of recommendations related to local policy changes, zoning code updates, and more coordination at the regional level. Additionally, the Town of Cape Elizabeth commissioned a Housing Diversity Study in 2022. This study aimed to assess the current housing landscape in the town and provide recommendations to create more affordable housing in the community. The Town has recently formed an ad-hoc committee to review the study, gather public feedback, and offer its recommendations on implementing the study in the fall of 2023.

Council, Commission and Planning Board makeup. To ensure a diverse range of community needs are understood and addressed, it’s important that plans, zoning codes, and planning decisions are informed by and reflect the communities they are intended to serve. One way to ensure that this occurs is to engage with and learn from a diversity of residents with different lived experiences and perspectives—both from the public and through elected and appointed leaders. As part of this report, an analysis of the gender, age, and racial/ethnic makeup of both the Portland City Council and Portland Planning Board, as well as the Cumberland County Commission was conducted. The length of service for these positions, which can limit the opportunity for new and diverse leaders to serve, were also examined. Additionally, meeting times and procedures were looked at to assess how accessible meetings are to participate in for working populations.

Among these three bodies, the Portland City Council boasts the greatest gender and racial/ethnic diversity. The mayor, who serves on the city council, serves a four-year term while the eight other councilors serve staggered three-year terms. The council meets the

1st and 3rd of every Monday at 5:00 p.m. While city council meetings have continued to be held virtually since the beginning of the pandemic, a 5:00 p.m. start time might limit a portion of the workforce—those who work night or swing shifts—from participating in city council meetings. However, the City does allow for written public comment on agenda items. The City requires that submissions be received by 12pm the day of the Council meeting to guarantee that it gets included in the agenda packet. Recordings of past meetings and meeting minutes are also made available to the public on the City’s website.

Both the City of Portland’s Planning Board and County Commission are less diverse than City Council when it comes to gender and racial/ethnic diversity. The City of Portland’s Planning Board members serve staggered three-year terms and meet on the 2nd and 4th Tuesday of each month. The Planning Board’s workshops begin at 4:30 p.m. and public hearings begin at 7:00 p.m. These later public hearings provide more opportunity for the workforce population to participate after they come home from work, but also might limit participation from households with young children, particularly if childcare is not provided, and swing and night shift workers.

The Cumberland County Commission meets every Monday at 5:30 p.m., which also might inhibit broad participation from the county workforce. County Commissioners serve four-year terms but cannot serve more than three consecutive terms.

Findings from Previous Analyses of Impediments

This is the first AI under the umbrella of the Cumberland County HOME Consortium. Individual jurisdictions and counties have conducted AIs separately in the past. This section highlights zoning and land use findings from the most recent AI for each participating jurisdiction that has previously conducted one.

Regional AI (York and Cumberland Counties). Similar to the 2010 Cumberland County AI, the 2013 Analysis of Impediments to Fair Housing completed by York and Cumberland Counties provides a cursory overview of cities' land use and zoning regulations. The primary zoning issue identified by the report is the large lot requirements that many municipalities have adopted, which has precluded construction of low- and moderate-income housing, namely multifamily properties, mobile homes, and small lot subdivisions. The report intimates these requirements have been driven by NIMBYism.

The report stated that "...larger land requirements add substantially to housing cost. While the presence of public water and sewer is certainly required for higher density development, historically towns have required large lot sizes throughout most of their districts in an effort to limit development and preserve rural character." This strategy has contributed to a sprawling development pattern that makes road construction and maintenance, as well as maintaining utility lines, more expensive. It also adds costs to transporting public school students as households are more diffuse throughout the county.

The report also identified passing LD 155, a bill aimed to streamline the approval of accessibility structures to provide greater accommodation for a person's disability in their home, as an action to complete in their fair housing action plan. The bill was signed by the Governor in May 2013.

Cumberland County. Cumberland County's 2010 AI identifies maximum allowable densities, dimensional standards, and parking requirements as regulatory barriers impeding the development of more housing throughout the county, particularly in suburban towns and more rural areas of the county. The AI states that more flexibility allowed related to density, dimensional standards, and parking requirements can help lower the per unit cost of housing projects.

The AI states that several urban areas allow at least eight units per acre in certain districts while a handful of suburban towns only allow a maximum of four units per acre. In response to pressure about increasing density, some towns have allowed for the development of accessory units. However, the AI implies that development of accessory dwelling units being built is unlikely. The AI states that "...few, if any [towns], have created a separate ordinance with standards for square footage, design, parking, and other considerations [for accessory dwelling units]."

To truly encourage increasing density in towns around the county, the AI suggests approaching the issue at a regional level by tying future transportation funding (e.g., road construction funds) to increased allowances in density.

The County also conducted an analysis of local zoning ordinances pertaining to group homes to determine consistency with State law and the FFHA. The analysis found that “[b]ased on this review, the only towns in Cumberland County with ordinances consistent with state and federal law are the Town of North Yarmouth and the City of Portland.” While the AI did concede that group homes do exist in over half of the municipalities in the county, “[u]nless challenged in court, these inconsistencies are likely to stand, since amendments to specifically allow group homes would be likely to stir local controversy.”

Portland. The City of Portland’s most recent AI was conducted in 2013. No explicit fair housing impediments related to zoning and land use in Portland were articulated; however, the AI did articulate the escalating cost of rental housing is impacting all populations, particularly low-income populations. While the AI did note that Portland’s ordinances are among the most progressive in the area, the City will continue to look at how to lower the cost of housing production, specifically calling out policies that allow for higher densities, provide more flexibility with parking requirements, and that require demolished homes be replaced with other housing.

Since the last AI in 2013, the City of Portland has passed several ordinances to help address the rising price of housing. The City’s Rental Registration program was established to better regulate renting of short-term and long-term units within the city, limit the impacts of short-term rentals, create more accountability around property maintenance, and ensure the availability of rental units for people who live in the city or want to live in the city. Additionally, the City passed a rent control ordinance in 2020 to establish a base rent for most of the rental inventory in the city and limit the amount by which a landlord can increase rent annually. The Ordinance also provided a variety of tenant protections to renters, including notice of rent increases, source of income protections, and notice of tenants’ rights to new tenants. The City created the Housing Safety Office to administer the Rental Registration program and conduct rental inspections.

As previously mentioned, the City of Portland is currently in the process of updating its land use code, which provides the opportunity to respond to recommendations in the past and current AI. The process, named *ReCode Portland*, is focusing on how the code can “...encourage more equitable housing creation, foster climate change resilience, and support transportation choice.”¹³ As of the writing of this report, the City released the [Land Use Code Evaluation](#) in December 2021 and plans to translate the findings of the evaluation into draft text and map amendments throughout the fall and winter of 2022/23.

¹³ <https://www.recodeportland.me/>

Zoning and Land Use Review: Portland and South Portland

This final section summarizes a deep dive zoning and land use analysis of Portland and South Portland—the largest contiguous communities in the region. This section also provides the results of the supplemental zoning and land use review for all other county municipalities included in the AI geographic scope.

The analysis focuses on:

- Allowing a range of housing types, especially those that promote and produce affordable housing and housing for special populations;
- Mitigating requirements that raise housing costs; and
- Analyzing whether definitions of family and disability create barriers to housing choice.

Portland. While no specific zoning or land use issues were identified in the City's last AI, it did acknowledge that the city would continue to look at how to lower the cost of housing, specifically policies allowing for higher densities, greater flexibility with parking requirements, and requiring that demolished housing be replaced with other housing.

Rising housing costs remain a significant concern in the city. As articulated in Portland's Plan 2030 (the city's comprehensive plan), "...both the lack of sufficient housing supply and the affordability of that housing for a healthy socio-economic cross-section of the population remain urgent challenges."¹⁴

Adopted by the City Council in 2017, Portland's Plan envisions that a significant portion of the housing built over the next ten years is affordable to Portland's workforce. While many jurisdictions throughout the county lack land zoned for missing middle housing — including townhomes and low-density multifamily development — and have restrictive site standards, Portland has a variety of residential and mixed-use districts that allow varying density, unit sizes, and unit types throughout the city. The flexibility allowed in the City's land use ordinance encourages a mix of housing types that promote affordability and infill development.

However, as acknowledged by the City in its Land Use Code evaluation, the City could look for opportunities to modify base zoning requirements in targeted areas to encourage more housing development, such as near downtown or along major transit corridors. Additionally, the city also identified allowing for creativity and flexibility for new development forms to better provide for a variety of household needs and preferences.

Strong areas in the code. The City has implemented a host of affordable housing incentives that provide relaxed land use regulations in exchange for housing affordability—

¹⁴ <https://view.publitas.com/city-of-portland/portlands-plan-2030/page/53>

including reduced setbacks, additional height, and reduced parking requirements. Density bonuses are available for affordable housing or workforce housing developments in mixed-use districts and one office district. The bonuses permitted are determined by the percentage of low-income or workforce units provided in the development, and the greater percentage of low income or workforce units, the greater the bonus. This holds true for additional height and setback reductions. The City specifies target incomes (AMIs) that must be met to qualify as an affordable housing development or workforce housing development. In the City's Land Use Code (LUC), a low income housing unit is defined as a dwelling where the rent is affordable to a household earning 80% AMI or less or where the sale price of a unit is affordable to a household earning 100% AMI or less. Workforce housing units for rent and sale are where the rent or the purchase price of the unit is affordable to a household earning 80%. The City defines *affordable housing* as housing that does not exceed 30% of a household's income.

Additionally, the land use code articulates that any residential development that includes low income or workforce housing and qualifies as an eligible project qualifies for reduced development fees. Similar to how bonuses are applied to projects, if a project designates 10% of their units as low income, they are eligible for a 10% reduction in development fees.

The City also has implemented a housing preservation and replacement ordinance to "promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups. The ordinance aims to preserve housing in zones where housing is permitted and limit the net loss of housing units throughout the city. Officially created in 2010, the City's Housing Trust Fund helps to carry out this ordinance, by prioritizing resources for developments that create housing affordable to households earning at or below 50% AMI, or projects that create housing affordable to households earning between 60% and 120% AMI.

In 2015, the City passed an inclusionary zoning ordinance, requiring all new housing development projects with 10 or more units to set aside 10% of their units as "workforce housing."¹⁵ In 2020, following the passage of Portland's Green New Deal, the requirement was increased for all new housing development projects with 10 or more units up to 25%. Since the initial inclusionary zoning ordinance was passed, 179 affordable rental or ownership units have been produced, while nearly \$1.7 million has been generated through fee in-lieu to support affordable housing development in the city. Nearly 300 additional affordable units are under construction or have been approved as a result of the City's IZ program.

¹⁵ The City of Portland defines a workforce rental unit as housing that is affordable to a household earning up to 100% of HUD Area Median Income (AMI). A workforce homeownership unit is housing for which the purchase price is affordable to a household earning up to 120% of Area Median Income (AMI).

Other efforts undertaken by the City to boost its housing stock include its recent accessory dwelling unit (ADU) rule changes, which allows up to two ADUs on any residential property, including multi-family housing, by right. Withstanding limited exceptions, ADUs are exempt from lot coverage and lot area per dwelling unit requirements. The City's off-street parking requirements also respond to the context of the type of housing being developed. No off-street parking is required for historic structures, accessory dwelling units, or developments that are within ¼ mile of fixed route transit service. Additionally, the City also provides flexibility to the Planning Board to allow less parking than is required for major site plans, affordable housing, and multi-family housing if certain conditions are met.

Finally, the City's base density and lot size provisions allow for medium- and higher-density housing developments to be built in a variety of zones across the city, particularly in mixed-use zones. The City has revised use and dimensional standards in several of these zones over the past decade in an effort to increase opportunities for housing production.

Areas for improvement. Areas of improvement the City could explore include:

Identifying barriers and exploring options and implications related to allowing for a greater diversity of housing types within the City's residential zones.

Currently, middle-density housing, which includes three-unit and four-unit dwellings, fall within the multifamily use category in the land use code. According to the City's analysis, while "multi-family" is widely permitted in mixed-use zones, it is permitted selectively among the city's residential zones. Identifying a new class of smaller "multi-family" housing types within the code could create opportunities to allow these types within a broader range of residential contexts.

Recommendations for Portland. We recommend the following modifications to the City of Portland's zoning and land use regulations to promote a more inclusive environment and mitigate potential barriers to housing development.

- Evaluate the effectiveness of dimensional bonuses and other regulatory incentives, and make changes as needed, to ensure that the incentives produce affordable housing that is needed to address disproportionate housing needs among protected classes. For example, it is common for density bonus programs to produce units that are tailored for a singular type of households, largely studios providing housing to single workers earning moderate wages. In Portland, the greatest needs (discussed in Section IV) include a significant gap in homeownership for African American/Black households, and very high levels of cost burden for single parent households, African American/Black households, and, to a lesser extent, Hispanic households, and mixed-race households.
- The City could prioritize monitoring to ensure that the dimensional bonuses and related measures produce units that respond to the needs of these groups

Additionally, the City could engage with key stakeholders annually to gather insight on potential refinements.

South Portland. The City of South Portland's most recent comprehensive plan (2012) set out a vision for providing a wide range of housing options throughout the city with a diversity of household composition in its neighborhoods. Single family homes accounted for 80% of the new housing development in South Portland between 1990 and 2010. Multi-family housing saw slight increases in small (less than 5 units) and large developments (more than 20 units) but lost nearly 200 units in middle-sized properties (developments with between 5-19 units) over the same time period.

While the city has created over 2,000 units of housing over the last twenty years, there is still a significant demand for housing. The City of South Portland recently conducted a housing needs assessment that found the city needs to provide over new 2,900 owner-occupied housing units and 58 renter-occupied units by 2030 to meet its housing demand.¹⁶ Recommendations to reach this goal include the allowance of duplexes/triplexes in all single family zones, increasing residential density, reducing lot sizes to 5,000 sq. ft., deregulating Accessory Dwelling Units, eliminating residential parking requirements, adopting a density bonus program, and expediting the permit approval process. These recommendations are primarily oriented towards homeowners and renters making up to 120% of area median income, and particular concern was raised for the "missing middle."¹⁷

These suggested actions are similar to the recommendations made by the city's Affordable Housing Committee in 2016, which included allowing higher densities, reducing or eliminating parking requirements, and expediting permitting review for affordable housing projects. The report also recommended that the City consider offering density bonuses in exchange for keeping existing affordable or keeping new units affordable, as well as supporting the creation of new rental housing through zoning updates.

The City has created a Housing Trust Fund, which is capitalized with over \$100,000 and the Affordable Housing Committee is developing a long-term funding strategy for the Fund. The City has also approved \$300,000 in American Rescue Plan Act funding for affordable housing projects. The City is preparing an Impact Fee Ordinance that will enable the collection of impact fees, and subsequent studies will explore a potential long-term funding source for affordable housing production through an Impact Fee structure. Finally, the City has approved Affordable Housing Tax Increment Financing Districts to offset costs associated with qualifying affordable housing projects and works in close partnership with

¹⁶ <https://www.pressherald.com/2022/06/23/study-south-portland-needs-2905-new-homes-by-2030-to-meet-expected-demand/>

¹⁷ "Missing middle" is defined as households making between 60% to 120% of the area median income.

the South Portland Housing Development Corporation/South Portland Housing Authority, as well as other providers to support affordable housing development.

In general, South Portland allows for a range of density and diversity of housing types; however, the City could be more explicit about allowing middle density residential options. The City's definition of family does not limit the number of unrelated individuals that are allowed to live together—a best practice. This allows for a greater diversity of housing choice for renters with roommates and cooperative living arrangements. However, the definition currently states that, "An individual or two (2) or more persons occupying a premise...or **based upon other domestic bond having the generic character of a traditional family unit.**" As currently written, it is difficult to discern that unrelated individuals are included in the definition. The City could consider revising its definition to make this more explicit.

As articulated in their appeals process for a disability variance, the City defines disability as set forth in Title 5, Section 4553-A of the Maine Revised Statutes Annotated (M.R.S.A.), which is in alignment with the definition of disability outlined in FHAA.

Recommendations for South Portland. We recommend the following modifications to the City of South Portland's zoning and land use regulations to promote a more inclusive environment and mitigate potential barriers to housing development.

- Clarify the definition of "family" in the zoning code. The current definition could be rewritten to be more explicit that unrelated individuals living together are included in the definition.
- Implement all recommendations articulated in South Portland's recent Housing Needs Assessment and Strategy (May 2022). A link to the report can be found [here](#). Recommendations include, but are not limited to, expanding allowances in single family zones, utilizing density bonuses to incentivize developers to build below market rate affordable units, capitalize the affordable housing trust fund, and allowing alternative housing types.

Zoning and Land Use Review: Balance of Cumberland County Jurisdictions

The following section provides a more cursory analysis of the zoning and land use ordinances for the additional 25 jurisdictions in Cumberland County, focusing on common regulations that have the potential to discriminate against protected classes under the Fair Housing Act. As acknowledged at the beginning of this section, each municipality in Cumberland County has their own set of zoning and land use regulations that respond to the specific context, opportunities, and constraints of their community related to housing development. While not every municipality in Cumberland County is ideally equipped to facilitate the development of high-density housing (e.g., lack of access to public water, sewer infrastructure, or other public utilities), each municipality can review, analyze and update its current code to help remove barriers to housing development and increase and diversify its housing stock in a way that best responds to their community's specific needs.

In addition to a brief analysis on growth ordinances throughout the county, this section summarizes six different elements of the land use and zoning ordinances of county jurisdictions, including definitions of family and disability, regulations related to group homes ("community living arrangements"), reasonable accommodation procedures, and allowance of a variety and density of housing types and related site standards. Existing accessory dwelling unit regulations were also analyzed; however, because the passage of LD 2003 mandates that accessory dwelling units be allowed where all single family dwellings are permitted, that analysis has been omitted from the section.

Growth ordinances. Home rule powers, as articulated in the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. §4360, allow local municipalities to develop ordinances to manage growth in their communities. However, growth ordinances have the potential to create barriers to fair housing choice by excluding housing types that are most commonly occupied by some protected classes. Namely, the growth ordinances in Baldwin, Cumberland and Windham allow an exemption from a residential growth restriction for affordable senior housing but not affordable family housing. To ensure that these ordinances are not in violation of the FFHA, it is suggested that all affordable housing be exempt from growth restrictions. The Town of Scarborough has adopted this approach, articulating that "a dwelling unit that qualifies as affordable housing under the Town's Zoning Ordinance"¹⁸ is not required to have a growth permit.

Disability. The zoning and land use review of Cumberland County jurisdictions included whether municipalities included a definition of disability. A best practice is to define disability in alignment with FHAA or to reference FHAA (note that the term "handicapped" is used in FHAA and is interpreted to have the same meaning as "disability"). This is helpful in

¹⁸ <https://resources.finalseite.net/images/v1634831471/scarboroughmaineorg/y7pahxmaxdpjxbf3nddh/413-Growth-Management-Ordinance.pdf>

determining requests for reasonable accommodation and ensures that all disabilities encompassed by FHAA are acknowledged in the local zoning code — including persons with substance abuse challenges who are in recovery. This group has been found by the courts to meet the definition of “disability.”

As written in 5 M.R.S. 4553-A, the definition of physical and mental disability¹⁹ aligns with the definition of disability as outlined in the FHAA. As such, municipalities should not need to define disability in local ordinances, although it is a best practice to do so, particularly a definition in alignment to the FHAA.

The following jurisdictions define disability and include an explicit reference to the FHAA, refer to disability as defined in 5 M.R.S. § 4553-A as part of their disability variance appeals process, or include a written definition that aligns with the definition articulated in 5 M.R.S. § 4553-A. **This is a best practice.**

- Bridgton;
- Brunswick;
- Casco;
- Chebeague Island;
- Falmouth;
- Freeport;
- Gray;
- Harpswell;
- Harrison;
- Long Island;
- Naples;
- New Gloucester;
- North Yarmouth;
- Portland;
- Pownal;
- Raymond;
- Scarborough;
- South Portland;
- Standish;
- Westbrook;
- Windham; and
- Yarmouth.

Raymond and Windham include definitions of disability in their Shoreland Zoning ordinances (or chapters). Both towns could consider including their current definitions of disability in their main Land Use ordinances, too, to increase transparency and uniformity. New Gloucester and Westbrook include different definitions of disability in both their primary land use ordinance and shoreland zoning ordinance (or section). Similarly, they could consider revising both sections to contain the same definition. Additionally, Gray calls out (correctly) that the term does not cover current, illegal use of or addiction to a controlled substance. Because persons with substance abuse challenges who are in

¹⁹ <https://www.mainelegislature.org/legis/statutes/5/title5sec4553-A.html>

recovery are considered to meet the definition of disability, the Town could consider language in its definition to further clarify the distinction.

These jurisdictions could consider including a definition of disability in alignment with the FHAA or refer to disability as defined by the state under 5 M.R.S. § 4553-A.

- Baldwin;
- Cape Elizabeth;
- Cumberland;
- Gorham; and
- Sebago.

Group home regulations. As articulated by the Department of Justice and HUD, the term “group home” has no specific legal meaning; however, land use and zoning officials, as well as the courts, have referred to some residences that house people experiencing disabilities as group homes. Discrimination on the basis of disability is prohibited by the Fair Housing Act, “...and persons with disabilities have the same Fair Housing Act protections whether or not their housing is considered a group home.”²⁰ In the Maine Revised Statutes, Title 30-A, Chapter 187, §4357-A, community living arrangements are defined as “...a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.”²¹ This section also articulates that disability in the context of community living arrangements has the same meaning as ‘handicap’ in the federal Fair Housing Act, 42 United States Code, Section 3602.”²²

Additionally, the statute also states that “[i]n order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning.” [This is a best practice.](#)

Definition of family. Although not unusual in residential codes, the definition of family that limits the number of unrelated persons but does not limit the number of “related” persons could come into conflict with FHAA. While all unrelated persons are treated the same, a definition of family that distinguishes between related and unrelated persons living together could create disparate treatment if, for example, a related family of

²⁰

<https://www.justice.gov/opa/file/912366/download#:~:text=The%20Fair%20Housing%20Act%20prohibits%20discrimination%20on%20the%20basis%20of,who%20live%20in%20group%20homes>.

²¹ <https://www.mainelegislature.org/legis/statutes/30-a/title30-Asec4357-A.html>

²² <https://www.mainelegislature.org/legis/statutes/30-a/title30-Asec4357-A.html>

eight persons is permitted to reside in a residence similar to one inhabited by unrelated persons with disabilities or other protected classes who may be more likely to live in unrelated group settings (e.g., refugees, agricultural workers), who are limited to five persons in the same residence. To this end, some municipalities have moved away from defining “family” to avoid potential FHAA conflicts and instead rely on occupancy standards to regulate overcrowding. The “Scarborough 11” case in Hartford, Connecticut provides a strong case for removing narrow definitions of family from local codes.

The following municipalities in Cumberland County have no definition of family in their zoning or land use ordinance. [This is a best practice.](#)

- Brunswick;
- Cape Elizabeth;
- Harpswell; and
- Westbrook.

The following municipalities in Cumberland County have a definition of family in their zoning or land use ordinance but do not limit the number of unrelated people living together. [This is also a best practice.](#)

- Bridgton;
- Harrison
- Long Island²³;
- Naples;
- North Yarmouth;
- Raymond;
- Scarborough;
- Sebago;
- South Portland; and
- Windham

Additionally, Portland and Casco allow up to eight unrelated individuals to live together. While allowing up to 12 unrelated individuals is ideal, up to eight is generally thought to be reasonable. The following municipalities in Cumberland County have a definition of family in their zoning or land use ordinance but limit the number of unrelated people living together. [These jurisdictions' codes should be updated to remove the definition of family or allow up to between 8-12 unrelated individuals to live together.](#)

- Baldwin (no unrelated individuals);
- Chebeague Island (up to five unrelated individuals);
- Cumberland (up to five unrelated individuals);

²³ Long Island allow up to 16 unrelated individuals to live together, which exceeds the number of unrelated individuals (12) articulated as a best practice.

- Falmouth (up to 6 unrelated individuals);
- Freeport (no unrelated individuals);
- Gray (up to five unrelated individuals);
- New Gloucester (up to five unrelated individuals);
- Pownal (up to five unrelated individuals);
- Standish (up to five unrelated individuals);
- Yarmouth (up to five unrelated individuals); and
- Gorham.²⁴

Reasonable accommodations. The Americans with Disabilities Act (ADA) prohibits discrimination based on disability, defined by ADA as a physical or mental impairment. The ADA requires accessibility in public places (i.e., open to and used by the public) and also requires that “reasonable accommodations” be allowed when necessary to permit persons with disabilities equal opportunity to enjoy such places. The accessibility provision in the FHAA governs residential accessibility, and requires that multifamily buildings built after March 13, 1991, have specific accessible design features and be adaptable. In addition, the FHAA ensures that persons with disabilities have the right to request and be granted modifications to residential units — as well as local regulations and standards —to make a residence or building accessible to them.

A best practice is to establish a standard process for reasonable accommodation requests. Some codes identify typical requests, such as a setback waiver for wheelchair ramps, as administrative in nature when it does not exceed a certain amount. Such requests are processed the same as any other building permit. Other reasonable accommodation requests are processed with a more detailed administrative review using criteria that comply with FHAA and ADA. This clarifies how a reasonable accommodation is reviewed and removes such requests from consideration under procedures and criteria that do not fit the circumstances of the request. When the reasonable accommodation request does not qualify for administrative review, a review before an appointed body can be used. However, the same criteria for deciding the request must be used:

- Whether the person to be accommodated has a disability;
- Whether the modification requested is reasonably necessary to accommodate that disability; and

²⁴ While Gorham does not have a definition of family, if three or more unrelated individuals are living together, then the household is considered a rooming house. Rooming homes are only allowed in a handful of zoning districts within the town. This could unintentionally limit housing options for unrelated individuals from living together who are not in a group home/community living arrangement set-up.

- Whether the modification would fundamentally and unreasonably alter the nature or purposes of the zoning ordinance. The burden is on the municipality to prove this would occur.

The International Building Code (IBC) allows appeal of decisions of the building official and decisions can be made based on “alternate equivalency” to meeting the IBC requirement. The building code does not tie the determination of an alternative to the physical characteristics of the property or building, making the standard appeal process available to process requests for reasonable accommodation. Examples may include lower sink heights to accommodate a person in a wheelchair, or special positioning of grab bars to accommodate different types of disabilities.

The Maine Revised Statutes (§4353 4-A) allow a municipality’s board of appeals to grant a variance “...to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.”

The following municipalities in Cumberland County include a procedure for an owner of a dwelling to request a variance for the purpose of making it more accessible to a resident with a disability in their zoning or land use ordinance. [This is a best practice.](#)

- | | | |
|---------------------|-------------------|-------------------|
| ■ Bridgton; | ■ Harrison; | ■ Sebago; |
| ■ Brunswick; | ■ Long Island; | ■ Standish; |
| ■ Cape Elizabeth; | ■ Naples; | ■ South Portland; |
| ■ Chebeague Island; | ■ New Gloucester; | ■ Westbrook; |
| ■ Falmouth; | ■ North Yarmouth; | ■ Windham; and |
| ■ Freeport; | ■ Portland; | ■ Yarmouth. |
| ■ Gray; | ■ Pownal; | |
| ■ Harpswell; | ■ Scarborough; | |

The following municipalities in Cumberland County do not include a procedure for an owner of a dwelling to request a variance for the purpose of making it more accessible to a resident with a disability in their zoning or land use ordinance. An improvement would be to establish this procedure.

- Baldwin;
- Casco;
- Cumberland;

- Gorham²⁵; and
- Raymond.

Additionally, the City of Portland includes a broader statement in its land use code that refers to reasonable accommodations in the context of fair housing. In its Introductory Provisions section, under 1.6.3. Fair Housing accommodations, it says:

“The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.”

This is a **best practice** and other municipalities should consider including similar language in their own zoning and land use codes.

Multifamily housing. Allowing for a range of density and dwelling types can help support the placement of new or rehabilitated housing for lower income households in a wide spectrum of neighborhoods. To better understand how land use regulations affect multifamily housing development, the Greater Portland Council of Governments (GPCOG) commissioned a report in 2021 to assess potential impediments in the seven Metro Regional Coalition communities — Cape Elizabeth, Falmouth, Gorham, Portland, Scarborough, South Portland, and Westbrook.

Some key findings²⁶ from the study include:

- Multifamily housing is permitted with few limiting factors on just over 5% of the land area in Metro Regional Coalition communities;
- Multifamily housing is not permitted in just under 40% of the land area in the region;
- While many communities’ land use codes allow for multifamily housing in theory, substantial barriers to multifamily development exists in reality, resulting in little or no production²⁷; and
- Regional planning and coordination would increase multifamily housing production in the region and better coordinate it with other planning goals.

²⁵ The Town of Gorham does not require that ADA accessible ramps meet minimum setback requirements.

²⁶ <https://www.gpcog.org/DocumentCenter/View/1633/Multi-family-housing-and-land-use-regulation-report-by-Jeff-Levine>

²⁷ One example highlighted by a smaller municipality in the county was their lack of access to public sewage disposal provisions or public water supply. As a result, they are forced to rely on a sole source aquifer with limited recharge potential, which they noted makes it critical to balance the density of development with the long-term management of the groundwater aquifer.

Additionally, the report used seven categories of impediments to multifamily housing to assess the limits on multifamily housing in each of the seven jurisdictions. In general, “few”, “some” or “more” limits would not be characterized as impediments to housing choice in the fair housing context, unlike areas where multifamily housing is “not allowed.” Overall, many zoning-related challenges exist in seeing multifamily housing built in the metro area. Half of the land in these seven jurisdictions has many limits on multifamily housing development while multifamily housing is not allowed on over a third (35%) of the land.

**Figure VIII-2.
Percentage of Land by Limits to Multifamily Development, Metro Regional Coalition Jurisdictions**

	Few Limits	Some Limits	More Limits	Many Limits	Not Allowed	N/A
Cape Elizabeth			1%	81%	18%	
Falmouth			4%	30%	66%	
Gorham		0.2%	2%	69%	29%	
Portland	12%	1%	12%	22%	52%	1%
Scarborough		2%	2%	63%	17%	17%
South Portland		20%	2%		74%	3%
Westbrook	3%	20%	22%	36%	17%	2%
Metro Regional Coalition	2%	4%	5%	50%	35%	5%

Source: GPCOG Multifamily Housing and Land Use Regulation Report and Root Policy Research.

As noted above, although multifamily housing might be allowed in the land use or zoning ordinance, other regulations might serve as barriers to actually seeing it built. The analysis conducted for this specific element of the zoning code only looked at whether municipalities allowed a variety of housing types to be built in their communities.

The following jurisdictions in Cumberland County allow for a variety of dwelling types in their zoning or land use ordinance. [This is a best practice.](#)

- Bridgton;
- Brunswick;
- Falmouth;
- Gorham;
- Naples;
- Portland;
- Scarborough;
- South Portland;
- Westbrook;
- Windham; and
- Yarmouth.

The following municipalities in Cumberland County allow for a limited range of density and dwelling types in their zoning or land use ordinance. **An improvement would be to allow a greater range of density and dwelling types by right.**

- Baldwin;
- Cape Elizabeth;
- Casco;
- Chebeague Island;
- Cumberland;
- Freeport;
- Gray;
- Harpswell;
- Harrison;
- Long Island;
- New Gloucester;
- North Yarmouth;
- Pownal;
- Raymond;
- Sebago; and
- Standish.

Dimensional standards. While a specific use might be allowed in a zoning or land use ordinance, specific dimensional standards, such as large lot sizes, setbacks or lot widths, might make the permitted use infeasible to develop. Additionally, burdensome site standards can contribute to increased development costs and discourage attached or multifamily housing. As previously acknowledged in this section, some municipalities are not able to accommodate higher density housing due to a variety of factors, such as lack of public utilities in many rural communities. However, for municipalities that want to encourage a range of housing types responsive to their community’s context and needs, this analysis is a starting point to review and update relevant site standards that might be current impediments.

The analysis, focused specifically on multifamily housing, found that the majority of Cumberland County municipalities have minimum lot sizes that discourage the development of this housing type. The findings below are primarily oriented around minimum lot size and minimum lot size per dwelling unit.

The following municipalities in Cumberland County have relatively small minimum lot sizes that encourage the development of a range of density and dwelling types. **This is a best practice.**

- Brunswick (no minimum lot area in growth area zoning districts; in other areas, minimum lot area per dwelling unit is between 1.5 to 4 acres);
- Freeport (where multifamily is allowed, most zones have low minimum lot size per dwelling unit requirements and reasonable minimum lot area sizes);
- Portland (where multifamily is allowed, most zones have no or low minimum lot sizes and no or low minimum lot size per dwelling unit regulations);

- South Portland (where multifamily is allowed, minimum lot size ranges from no minimum to 10,000 sq. ft., no minimum lot size per dwelling unit); and
- Westbrook (where multifamily is allowed, minimum lot size ranges from no minimum to 20,000 sq. ft., minimum lot size per dwelling unit ranges from 2,500 to 5,000 sq. ft.).

The following municipalities in Cumberland County have a limited range of minimum lot sizes that encourage the development of a variety of dwelling types. **An improvement would be to reduce the minimum lot size regulations in more zoning districts across their respective communities.**

- Baldwin (min. lot size for residential uses ranges from 2 to 10 acres);
- Bridgton (where multifamily is allowed, minimum lot size ranges from 2,500 sq. ft. to 80,000 sq. ft.);
- Cape Elizabeth (where multifamily is allowed, minimum lot size ranges from 7,500 to 15,000 sq. ft., minimum lot area per dwelling ranges from 3,000 sq. ft. to 7,500 sq. ft.);
- Casco (minimum lot size of 60,000 sq. ft. per unit where duplexes and multiplexes allowed);
- Chebeague Island (minimum lot size of 1.5 acres, 0.94 acres per unit for duplex throughout town; large setback requirements);
- Cumberland (where multifamily is allowed, minimum lot area per dwelling ranges from 2,500 sq. ft. to 2.5 acres);
- Falmouth (where multifamily is allowed, minimum lot size ranges from 30,000 sq. ft. to 2 acres, minimum lot area per dwelling unit ranges from 15,000 to 25,000 sq. ft.);
- Gorham (where multifamily is allowed, minimum lot size ranges from 10,000 to 60,000 sq. ft, minimum lot area per dwelling unit also range from 10,000 to 60,000 sq. ft.; the Town allows developers to buy up density that can bring down minimum lot size to 5,000 sq. ft. per dwelling);
- Gray (site standards are determined by district, not use —minimum lot size per dwelling unit ranges from 10,000 sq. ft. to 4 acres);
- Harpswell (minimum lot size per dwelling unit outside subdivision is 40,000 sq. ft., within subdivision is 80,000 sq. ft.; the town has a provision for affordable workforce housing that reduce minimum lot size to about 27,500 sq. ft.);
- Harrison (minimum lot size per dwelling unit in town's districts range between 40,000-50,000 sq. ft.);
- Long Island (where multifamily is allowed, minimum lot area is between 30,000 to 60,000 sq. ft., minimum lot area per dwelling unit is 30,000 sq. ft.);
- Naples (minimum lot size for all districts is 40,000 sq. ft.; for multifamily, minimum lot size per dwelling unit is 20,000 sq. ft.);



- New Gloucester (minimum lot size per dwelling unit in town’s districts range from 1 acre to 5 acres);
- North Yarmouth (where multifamily is allowed, minimum lot size is 1 acre; no minimum lot size per dwelling unit regulations);
- Pownal (no site or dimensional standards articulated for multiunit dwellings);
- Raymond (where multifamily is allowed, minimum lot size of 40,000 sq. ft. for the first two dwelling units, an additional 15,000 sq. ft. for each dwelling unit after that);
- Scarborough (where multifamily is allowed, minimum lot size ranges from 10,000 to 80,000 sq. ft., minimum lot area per dwelling unit ranges from approximately 8,700 sq. ft. to 2 acres);
- Sebago (where multifamily is allowed, minimum lot size ranges from 40,000 sq. ft. to 3 acres, minimum lot area per dwelling unit ranges from 60,000 to 80,000 sq. ft.);
- Standish (Some zoning districts in the town’s form-based code have minimum lot size between 7,000 – 15,000 sq. ft. based on sewage flows while other districts have minimum lot sizes of 20,000 sq. ft. In the town’s traditional districts, where multifamily dwellings are allowed, minimum lot size per dwelling unit ranges from 60,000-80,000 sq. ft. depending on access to public water; large setback requirements in some zoning districts);
- Windham (where multifamily is allowed, minimum lot size ranges from no minimum to 80,000 sq. ft., minimum lot size per dwelling unit ranges from no minimum to 60,000 sq. ft.); and
- Yarmouth (The Town’s Character Based Development Code has no minimum lot size and no minimum lot area per unit; The Town’s zoning ordinance has minimum lot size per dwelling unit range from an acre to 2.5 acres; minimum lot area for multiplex dwellings in LDR and MDR districts is 30 and 10 acres, respectively).

Figure VIII-3 presents the findings articulated above into a matrix for jurisdictions to understand how their current regulations compare to other county towns and cities. The matrix not only serves as a resource to holistically assess the impact of zoning and land use regulations on housing countywide but also aims to encourage jurisdictions to adopt best practice code language from surrounding communities.

- **Green shading** suggests a best practice or adequate aspect of the code.
- **Orange shading** suggests room for improvement.

**Figure VIII-3.
Zoning Review Matrix**

	Disability definition	Family definition	Reasonable accommodations	Range of density and dwelling types	Dimensional standards
Baldwin	Needs improvement	Needs improvement	Needs improvement	Needs improvement	Needs improvement
Bridgton	Adequate	Adequate	Adequate	Adequate	Needs improvement
Brunswick	Adequate	Adequate	Adequate	Adequate	Adequate
Cape Elizabeth	Needs improvement	Adequate	Adequate	Needs improvement	Needs improvement
Casco	Adequate	Adequate	Needs improvement	Needs improvement	Needs improvement
Chebeague Island	Adequate	Needs improvement	Adequate	Needs improvement	Needs improvement
Cumberland	Needs improvement	Needs improvement	Needs improvement	Needs improvement	Needs improvement
Falmouth	Adequate	Needs improvement	Adequate	Adequate	Needs improvement
Freeport	Adequate	Needs improvement	Adequate	Needs improvement	Adequate
Gorham	Needs improvement	Needs improvement	Needs improvement	Adequate	Needs improvement
Gray	Adequate	Needs improvement	Adequate	Needs improvement	Needs improvement
Harpswell	Adequate	Adequate	Adequate	Needs improvement	Needs improvement
Harrison	Adequate	Adequate	Adequate	Needs improvement	Needs improvement
Long Island	Adequate	Adequate	Adequate	Needs improvement	Needs improvement
Naples	Adequate	Adequate	Adequate	Adequate	Needs improvement
New Gloucester	Adequate	Needs improvement	Adequate	Needs improvement	Needs improvement
North Yarmouth	Adequate	Adequate	Adequate	Needs improvement	Needs improvement
Portland	Adequate	Adequate	Adequate	Adequate	Adequate
Pownal	Adequate	Needs improvement	Adequate	Needs improvement	Needs improvement
Raymond	Adequate	Adequate	Needs improvement	Needs improvement	Needs improvement
Scarborough	Adequate	Adequate	Adequate	Adequate	Needs improvement
Sebago	Needs improvement	Adequate	Adequate	Needs improvement	Needs improvement
South Portland	Adequate	Adequate	Adequate	Adequate	Adequate
Standish	Adequate	Needs improvement	Adequate	Needs improvement	Needs improvement
Westbrook	Adequate	Adequate	Adequate	Adequate	Adequate
Windham	Adequate	Adequate	Adequate	Adequate	Needs improvement
Yarmouth	Adequate	Needs improvement	Adequate	Adequate	Needs improvement

 Adequate
 Needs improvement

Source: Zoning and land use ordinances of Cumberland County municipalities and Root Policy Research.

Key findings of the analysis include:

- Nearly every Cumberland County jurisdiction provides a definition of disability in alignment with the FHAA or a reference to the state definition of disability, which is in alignment with the FHAA. This is a best practice.
- Nearly half of county jurisdictions do not provide a definition of family or don't limit the number of unrelated individuals that can live together in their land use or zoning ordinance — a best practice. If a jurisdiction does want to provide a definition of family in their ordinance, it's suggested that the definition be flexible enough to allow a range of household and family configurations, especially those needed to accommodate caregivers.
- Over 80% of jurisdictions include a procedure for a homeowner to request a disability variance. Additionally, the City of Portland includes a broader statement in its land use code that refers to reasonable accommodations in the context of fair housing — this is a best practice.
- Close to half of county jurisdictions allow for an adequate range of density and dwelling types. However, the majority of jurisdictions have site standards that make it difficult to build for a range of housing types. The biggest issue identified as an impediment to building a diversity of housing is minimum lot area per unit.
 - Due to a variety of factors (e.g., lack of access to public utilities), some communities in Cumberland County are better positioned to facilitate higher density development. However, each municipality is well positioned to review, analyze, and update its current code to help remove barriers to housing development and increase and diversify its housing stock in a way that best responds to their community's specific needs.