

TITLE 100: NORTHERN MARIANAS HOUSING CORPORATION

CHAPTER 100-90 SECTION 8 ADMINISTRATIVE PLAN FOR RENTAL ASSISTANCE PROGRAMS

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Chapter Authority: 2 CMC § 4433; Executive Order 94-3 § 407.

Chapter History: Amdts Adopted 38 Com. Reg. 38391 (July 28, 2016); Amdts Proposed 37 Com. Reg. 37239 (Nov. 28, 2015); Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: 2 CMC § 4411 creates the Mariana Islands Housing Authority (MIHA) as a public corporation within the Commonwealth government, charged with meeting the need for decent, safe and sanitary housing for persons of low and moderate income in the Commonwealth. See 2 CMC §§ 4411-4457. 2 CMC § 4433 sets forth the powers of MIHA, including the general power to do any and all things necessary or convenient to effectuate the purposes of the act and to carry out any of the powers granted by the act. See 2 CMC § 4433(t).

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 § 407:

Section 407. Marianas Housing Authority.

(a) The Marianas Housing Authority is abolished and its functions transferred to a Division of Housing within the Commonwealth Development Authority, which shall have at its head a Director of Housing.

(b) Any bond or other indebtedness of the Mariana Island Housing Authority shall be assumed by the Commonwealth government, but only upon such terms and security as shall have been agreed to previously by the Authority. The full faith and credit of the Commonwealth shall to secure such bond or other indebtedness, except as may have been pledged prior to such assumption or as otherwise provided by law.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

The Northern Marianas Housing Corporation is a subsidiary corporation of the Commonwealth Development Authority and the successor to MIHA under Executive Order 94-3. See 2 CMC § 4482(d).

This chapter was originally promulgated as “revisions” to Chapter 100-80. The Notice of Proposed Regulations contained the following section:

Citation of Related and/or Affected Statutes, Rules and Regulations. The proposed revisions were formulated to restate, enhance, supplement and clarify the existing NMHC Administrative Plan for Rental Assistance Programs and will not repeal the entire plan located at Northern Mariana Islands Administrative Code (NMIAC), Title 100, Chapter 80.

Sections of this chapter are clearly incompatible with the plan existing at Title 100, Chapter 80. As the adopted regulations provided no guidance for the Commission regarding which sections were to be repealed, the Commission codified the regulations as new Chapter 90. To the extent that the regulations in Chapter 80 conflict with these regulations, they are superseded.

Part 001 - Background

§ 100-90-001 Preamble

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- (a) The United States Department of Housing and Urban Development (HUD) operates a subsidized program known as the Section 8 Program. In the Commonwealth of the Northern Mariana Islands (CNMI), this program is administered by the Northern Marianas Housing Corporation (NMHC), a division under the Commonwealth Development Authority (CDA).
- (b) Eligibility to participate in the Section 8 Program is determined by family size and income, in accordance with federal statutes, regulations, and NMHC's rules and regulations as provided under this administrative plan.
- (c) Under the Section 8 Program, as administered by NMHC, families may reside in units owned by NMHC, or they may reside in privately-owned housing units.
- (d) Privately-owned housing units participating in the programs are required to pass minimum housing quality standards (HQS) established by HUD or the local housing code, whichever is more stringent. Contract rentals must be comparable to rentals received for housing units of the same size and type in the same general neighborhood.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words "program" in subsections (a), (b), and (c), and "federal" in subsection (b) pursuant to 1 CMC § 3806(f).

§ 100-90-005 Local Objectives

The rental assistance programs are designed to achieve two underlying objectives:

- (a) To provide decent, safe, and sanitary housing for low income families while maintaining their rent payments at an affordable level;
- (b) To provide an incentive to private property owners to rent to low income families by offering timely assistance payments.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-010 Purpose (24 CFR § 982.54)

- (a) The purpose of the administrative plan is to establish policies for carrying out NMHC's rental assistance programs in a manner consistent with funding source requirements and local objectives. The Plan covers both admission and continued participation in these programs. Policies are the same for all programs unless otherwise noted.
- (b) NMHC is responsible for complying with all changes in program regulations pertaining to these programs. If such changes conflict with this plan, program regulations will have precedence. The original plan and any changes must be approved by the Board of Directors of NMHC and a copy provided to HUD.

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History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “administrative” and “plan” pursuant to 1 CMC § 3806(f).

§ 100-90-015 Equal Opportunity and Fair Housing

(a) It is the policy of NMHC to comply fully with all federal, state, and local nondiscrimination laws and with the rules and regulations governing fair housing and equal opportunity in housing and employment.

(b) NMHC shall not deny any family or individual the opportunity to apply for or receive assistance under the Section 8 programs on the basis of race, sex, religion, creed, national, or ethnic origin, age, family or marital status, handicap or disability or sexual orientation.

(c) To further its commitment to full compliance with applicable civil rights laws, NMHC will provide information pertaining to federal, state, and local laws to the program to voucher holders regarding “discrimination” and any recourse available during the family briefing session, and applicable Fair Housing Information and Discrimination Complaint Forms will be made a part of the voucher holder’s briefing packet.

(d) No individual with disabilities shall be denied the benefits or be excluded from participating in this program.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words “fair housing” and “equal opportunity” in subsection (a), “programs” in subsection (b), and “civil rights” in subsection (c) pursuant to 1 CMC § 3806(f).

§ 100-90-020 Privacy Rights (5 U.S.C. § 552a)

(a) Applicants and participants, including all adults in their households, are required to sign the HUD 9886 Authorization for Release of Information. This document incorporates the Federal Privacy Act Statement and describes the conditions under which HUD will release family information.

(b) NMHC’s practices and procedures are designed to safeguard the privacy of applicants and program participants. All applicant and participant files will be stored in a secure location which is only accessible by authorized personnel.

(c) In accordance with HUD requirements, NMHC will furnish prospective owners with the family’s current address as shown in NMHC’s records and, if known to NMHC, the names and address of the landlord at the family’s current and prior address.

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(d) NMHC's policy is to ensure objectivity and consistency in applying the following criteria to evaluate the eligibility of families who apply. Staff will carefully review all information provided by the family. Families will be provided the opportunity to explain their circumstances, to furnish additional information, if needed, and to receive an explanation of the basis for any decision made by NMHC to their eligibility.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

§ 100-90-025 Accounts and Records (24 CFR § 982.158)

(a) NMHC must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements and in a manner/form required by HUD that permits a speedy and effective audit. NMHC must also furnish to HUD accounts and other records, reports, documents and information, as required by HUD; and in addition to HUD, the Comptroller General of the United States shall have full and free access to all NMHC offices and facilities, as well as all accounts and other records that are pertinent to administration of the program, including the right to examine or audit the records, and to make copies. Lastly, NMHC must prepare a unit inspection report.

(b) NMHC must keep and maintain the following during the term of each assisted lease, and for at least seven years thereafter:

- (1) A copy of the executed lease;
- (2) The HAP contract; and
- (3) The application from the family

(c) NMHC must keep the following records for at least seven years:

- (1) Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- (2) An application from each ineligible family and notice that the applicant is not eligible;
- (3) HUD-required reports;
- (4) Unit inspection reports;
- (5) Lead-based paint records as required by Title 24, Part 35, Subpart B of the Code of Federal Regulations.
- (6) Accounts and other records supporting NMHC budget and financial statements for the program;
- (7) Records to document the basis for NMHC determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- (8) Other records specified by HUD.

Modified, 1 CMC § 3806(a), (g).

History: Adopted 38 Com. Reg. 38391 (July 28, 2016); Proposed 37 Com. Reg. 37239 (Nov. 28, 2015).

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Commission Comment: The Commission numbered this section pursuant to 1 CMC § 3806(a). The Commission changed “part 35, subpart B of this title” in subsection (c)(5) to “Title 24, Part 35, Subpart B of the Code of Federal Regulations” pursuant to 1 CMC § 3806(g).

Part 100 - Application Process and Requirements

§ 100-90-101 How to Apply

NMHC will accept and process applications in accordance with applicable federal regulations. Applications will be received and processed as follows:

- (a) Applications will be taken at NMHC’s central office or its field offices on Rota and Tinian, as the case may be, at which time all applicants will receive a written statement documenting receipt of the application by NMHC. Unless the waiting list is closed, an application must be accepted even if an informal discussion indicates that the applicant or his/her family may not be eligible.
- (b) Before formal acceptance of the application, applicants will be expected to provide on the formal application forms all information necessary for making eligibility determinations.
- (c) All adult members of the household age eighteen years or older must be present to complete and sign the application and to provide photo identification. This provision can be waived only for good cause. (Good cause shall include applicants that are disabled and require that the application be completed by mail.)

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission struck the figure “18” from subsection (c) pursuant to 1 CMC § 3806(e). The final sentence of subsection (c) was located in a footnote in the original regulation. The Commission moved it to the text of subsection (c) pursuant to 1 CMC § 3806(a).

§ 100-90-105 Applications

- (a) The purpose of the application is to permit NMHC to assess family eligibility or ineligibility and to determine placement on the waiting list. The application shall contain questions designed to obtain the following information:
 - (1) Name and date of birth of all members;
 - (2) Sex and relationship of all members;
 - (3) Street address and phone numbers;
 - (4) Mailing address (if P.O. Box or other permanent address);
 - (5) Amount(s) and source(s) of income received by household members;
 - (6) Information related to qualification for preference;
 - (7) Social Security numbers;
 - (8) Race/Ethnicity;
 - (9) Citizenship/eligible immigration status;
 - (10) Arrests for drug-related or violent criminal activity;
 - (11) Requests for specific accommodation needed to fully utilize program and services; and

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(12) Other questions that may be deemed necessary to facilitate the eligibility determination process.

(b) The information on the application will not be verified until the applicant has been selected for final eligibility determination. Final eligibility will be determined when the full application process is completed and all information is verified.

(c) Applicants are required to inform NMHC within thirty days of changes in family composition, income, and address, as well as any changes in preference status. Applicants are also required to respond to requests from NMHC to update information or to determine continued interest in assistance. If a family fails to respond to a request from NMHC to update information, NMHC may, after sending a second request by certified mail, reject the application. No application shall be rejected until the thirty-first day after the receipt of the second request, or if the second request is returned to NMHC by the Post Office on the thirty-first day after it was mailed by NMHC.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words “Social Security” in subsection (a)(7) pursuant to 1 CMC § 3806(f). The Commission struck the figures “30” and “31st” from subsection (c) pursuant to 1 CMC § 3806(e).

§ 100-90-110 Missed Appointments

Applicants who fail to appear on a scheduled appointment will be afforded a second appointment for good cause. An applicant who fails to appear on the second scheduled appointment will be sent a notice of denial and/or withdrawal from the waiting list. (24 CFR § 982.522(a)*) Applicants removed from the waiting list may request NMHC for an informal review.

* So in original. 24 CFR § 982.522 does not exist.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Part 200 - Verifications

§ 100-90-201 Verification of Applicant Information

(a) Information provided by the applicant will be verified including information related to family composition, income, allowances and deductions, assets, eligible immigration status, full-time student status and other factors related to preferences, eligibility, and rent calculation. Verifications may not be more than sixty days old preceding the issuance of voucher.

(b) In order to verify information provided by a family, each adult member must sign a HUD-approved consent for release of information form that would authorize NMHC to verify income and source of income information provided by the family.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission corrected the spelling of the word “factors” in subsection (a) pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the word “eligibility” in subsection (a) pursuant to 1 CMC § 3806(g). The Commission struck the figure “60” from subsection (a) pursuant to 1 CMC § 3806(e).

§ 100-90-205 Methods of Verification

- (a) The acceptable methods NMHC uses to verify an applicant’s information include:
- (1) Upfront Income Verification (UIV) — NMHC uses the EIV system (an independent computerized resource) to obtain verification of employment, gross wages, unemployment compensation, and Social Security benefits;
 - (2) Written third-party verification;
 - (3) Verbal third-party verification;
 - (4) Review document — Tenant-provided documents to support declaration of income, etc.; and
 - (5) Tenant certification — Tenant must submit notarized statement of reported income, assets, or expenses.
- (b) NMHC requires initial mail requests for written verifications addressed to the source of income (or expense). If the information is not returned within 15 days, NMHC shall attempt telephone verification. If both written and oral third party verification attempts fail, the applicant or participant shall be required to provide documents as verification. The client file must include notes as to why documents provided by the client have been used instead of the preferred third party verification.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words “Social Security” in subsection (a) pursuant to 1 CMC § 3806(f).

§ 100-90-210 Verification of Citizenship or Eligible Non-Citizen Status (HCV Program Guidebook 7420-10G: Citizenship Status)

- (a) Persons claiming eligible immigration status must present appropriate immigration documents, which must be verified by NMHC through the United States Citizenship and Immigration Services (USCIS).
- (b) Every applicant household for (and participant in) the housing choice voucher program must sign a certification for every household member either claiming status as:
- (1) A U.S. citizen, or
 - (2) An eligible alien, or
 - (3) Stating the individual’s choice not to claim eligible status and acknowledge ineligibility.

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(c) Declaration of United States Citizenship. For household members claiming U.S. citizenship, only a declaration (HUD Form 214) signed by the household member (or in the case of a minor child, by a parent) is required by regulation.

(d) Acceptable Official Documents for Verification of Information. NMHC requires verification of the information provided through the presentation of any one or all of the following official documents:

- (1) United States passport;
- (2) Resident Alien Card;
- (3) Registration Card;
- (4) Social Security card;
- (5) Other appropriate documentation.

(e) Verification of Social Security Numbers (24 CFR Part 5.216 and PIH Notice 2012-10)

(1) NMHC will verify Social Security numbers through the following documents:

- (i) An original SSN Card issued by the Social Security Administration;
- (ii) An original document issued by the Social Security Administration containing the name and SSN of the individual; or
- (iii) An original document issued by a federal, state, or local government agency containing the name and SSN of the individual.

(2) NMHC will verify the SSN through the EIV System. Once the individual's identity verification status is classified as "verified" through the EIV Summary Report or Income Report, NMHC will retain a copy of the report in each family file as confirmation of compliance with the SSN disclosure, documentation, and verification requirements. The retention of the EIV report in the tenant file is adequate documentation of a valid tenant SSN.

(3) Once an individual's identity verification status is classified as "verified" through the EIV Summary Report or Income Report, NMHC will remove and destroy (i.e. shredding) the copy of the documentation referenced above so as to minimize the risk of exposing the individual's SSN. This should be done no later than the next annual or interim reexamination.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The first two paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission corrected the spelling of the word "be" in subsection (a) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word "numbers" in subsection (e)(1) pursuant to 1 CMC § 3806(f).

Subsection (e) did not appear in the proposed regulations and was added as a modification in the Notice of Adoption.

§ 100-90-215 Verification: Validity

NMHC shall only accept information verified and dated 60 days preceding the actual receipt of the aforesaid documents. Information exceeding 60 days must be updated and re-verified.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Part 300 - Eligibility

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§ 100-90-301 Requirements

To be eligible for participation, an applicant must meet HUD's criteria, as well as any permissible criteria established by NMHC. The HUD eligibility criteria include:

- (a) An applicant must be a "family."
- (b) An applicant must be within the appropriate income limits.
- (c) An applicant must furnish Social Security numbers for household members 6 years or older.
- (d) An applicant must furnish evidence of citizenship/Eligible Immigration Status.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words "numbers" in subsection (c) and "citizenship" in subsection (d) pursuant to 1 CMC § 3806(f).

§ 100-90-305 Family Composition (24 CFR § 982.201(c))

The applicant must qualify as a "family."

- (a) Family: Defined (24 CFR § 5.403 Definitions.) Family includes but is not limited to:
 - (1) A family with or without children (the temporary absence of a child from the home due to placement in foster care shall not be considered in determining family composition and family size);
 - (2) An elderly family;
 - (3) A near-elderly family;
 - (4) A disabled family;
 - (5) A displaced family;
 - (6) The remaining member of a tenant family; and
 - (7) A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.
- (b) Other Qualifying Relationships/Arrangements. The term "family" shall also include two or more persons (with or without children) regularly living together, related by blood, marriage, adoption, guardianship, or operation of law; OR two or more persons who are related but who are regularly living together and can verify shared income or resources; OR two or more persons who intend to share residency and whose income and resources are available to meet the family's needs.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word "family" pursuant to 1 CMC § 3806(f). The Commission inserted a comma after the word "guardianship" in subsection (b) pursuant to 1 CMC § 3806(g).

§ 100-90-310 Income Limitation (HCV Program Guidebook 7420-10G: Income Limits)

(a) HUD establishes income limits by family size for the area in which NMHC is located. The income limits are published annually in a HUD Notice and are generally effective on the date of publication. The income limits are available on the Internet at www.huduser.com at the “datasets” portal.

(b) There are two income limits that are used to determine eligibility for the housing choice voucher program and a third that is used to ensure that NMHC has met its target for assisting the neediest families in the community.

(1) The very low-income limit, which is set at 50 percent of the area median income, is the income limit generally used to determine initial program eligibility.

(2) The low income-limit, set at 80 percent of the area median income, is used for families whose incomes fall below the very low-income limits but who are considered to be eligible for assistance:

(i) Continuously assisted under the public housing or Section 8 programs;

(ii) Non-purchasing households in the following homeownership programs: HOPE 1, HOPE 2 or other HUD-assisted multifamily home ownership programs covered under 24 CFR 284.173*;

(iii) Displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract.

* So in original. 24 CFR 284.173 does not exist.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the word “programs” in subsection (b)(2)(i) pursuant to 1 CMC § 3806(f).

§ 100-90-315 Income Target Requirements (24 CFR § 982.201(b)(2))

At least 75 percent of the families who are admitted to NMHC’s housing choice voucher program during the housing agency’s fiscal year must be extremely low-income. Extremely low-income families are those with incomes at or below 30 percent of the area median income.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-320 Social Security Numbers

Families are required to provide verification of Social Security numbers for all family members age six years or older prior to admission, if they have been issued a number by the Social Security Administration. This requirement also applies to persons joining the family after admission to the program.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The Commission corrected the capitalization of the word “numbers” pursuant to 1 CMC § 3806(f). The Commission struck the figure “6” pursuant to 1 CMC § 3806(e).

§ 100-90-325 Citizenship or Eligible Non-Citizen Status

(a) In order to receive assistance, a family member must be a U.S. citizen or eligible immigrant. Individuals who are neither may elect not to contend with their status.

(b) In addition to citizens, persons who qualify on the basis of “eligible immigration status” are:

(1) A non-citizen lawfully admitted for permanent residence as an immigrant (including special agricultural workers granted lawful temporary resident status, but excluding alien visitors, tourists, diplomats, or students who enter the U.S. temporarily with no intention of abandoning their residence in a foreign country*);

(2) A non-citizen who entered the U.S. before June 30, 1948 (or such later date as enacted by law) and who has continuously maintained residence in the U.S. since then and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General;

(3) A non-citizen who is lawfully present in the U.S. as a result of

(i) refugee status,

(ii) the granting of asylum which has not been terminated, or

(iii) the granting of conditional entry prior to April 1, 1980 because of persecution on account of race, religion, or political opinion, or because of being uprooted by catastrophic national calamity;

(4) A non-citizen who is lawfully present in the U.S. as a result of an exercise of discretion by the U.S. Attorney General for emergency reasons or reasons deemed strictly in the public interest;

(5) A non-citizen who is lawfully present in the U.S. as a result of the Attorney General’s withholding deportation;

(6) A non-citizen lawfully admitted for temporary or permanent residence; and

(7) A non-citizen who is lawfully in the U.S. and its territories and possessions under Section 141 of the Compacts of Free Association between the U.S. government and the governments of the Marshall Islands, the Federated States of Micronesia, and Palau, while the applicable section is in effect.

* So in original.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-330 Changes in Eligibility Prior to Signing of HAP Contract

Changes that occur during the period between placement on the waiting list and issuance of a voucher may affect the family’s eligibility or Total Tenant Payment (TIP). For example, if a family exceeds the income limit prior to lease up (getting housed), the applicant will no longer

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be eligible for the assistance under program. The family will then be notified in writing of their ineligible status and their right to an informal review.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-335 Ineligible Families

Families who are determined to be ineligible will be notified in writing of the reason for denial and given an opportunity to request an informal review or an informal hearing (if they were denied due to non-citizen status).

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Part 400 - The Waiting List and Preference System

§ 100-90-401 Opening the Waiting List (24 CFR § 982.206)

NMHC shall issue a public notice advising the general public that applications for Section 8 are being accepted. The public notice shall contain the places, date, time, application procedures, and any limitations on who may apply and shall be published in a local newspaper of general circulation.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission inserted a comma after the word “procedures” pursuant to 1 CMC § 3806(g).

§ 100-90-405 Preference System (24 CFR § 982.207)

(a) Preferences are used to establish order of placement on waiting list. A preference does not guarantee admission. Preferences will be granted to applicants who are otherwise qualified and who, at the time they are certified for admission, meet the definitions of preferences prescribed.

(b) Order of Preferences & Points Afforded:

- | | |
|--|--------|
| (i) Elderly | 3 pts. |
| (ii) Persons with Disabilities | 3 pts. |
| (iii) Involuntary Displacement [†] | 3 pts. |
| (iv) Victims of Domestic Violence | 3 pts. |
| (v) Substandard Housing | 2 pts. |
| (vi) High Rent Burden (Rent is > 50 percent of income) | 2 pts. |

[†] Involuntary displacement includes any of the following: disaster, fire, government action, action of housing owner, inaccessibility, and property disposition.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The sentence marked by the dagger was a footnote in the original regulation. The Commission moved it to the body of the regulation pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of words in the daggered section pursuant to 1 CMC § 3806(f).

§ 100-90-410 Closing the Waiting List (24 CFR § 982.206)

NMHC shall accept applications only if the waiting list is minimized to 500 or less applicants. Decisions to close the waiting list will also be based on the number of applications available for particular sizes of units available, the number of applicants who qualify for local preferences, and the ability of NMHC to house an applicant in an appropriate unit within a reasonable time. The closing of the waiting list, restricting intake, or re-opening the waiting list will be announced publicly in the newspaper with a general circulation, and the dates for both intake and closing of applications.

History: Amdts Adopted 38 Com. Reg. 38391 (July 28, 2016); Amdts Proposed 37 Com. Reg. 37239 (Nov. 28, 2015); Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-415 Purging the Waiting List (24 CFR § 982.204(c))

(a) Purging the waiting list prevents delays in leasing activities. When a waiting list is out of date, it can be very difficult, if not impossible, to reach applicants selected from the waiting list. Once they are contacted, their applicant status has often changed such that they no longer meet NMHC's eligibility or selection criteria. If these delays occur regularly, they can result in a declining leasing rate. Therefore, the primary goal in purging the waiting list is, to obtain current information on interested applicants and to remove applicants no longer interested in participating in the program. (HCV Program Guidebook 7420-10G: Purging and Updating a Waiting List.)

(b) NMHC will update and purge its waiting list bi-annually or as needed, and based on the agency's waiting list turnover and housing success rates. Every six months or as it deems necessary, NMHC shall send out a written invitation to applicants to attend an eligibility appointment. Failure to attend appointment or respond to this invitation may be used as grounds for an applicant's removal from the program's waiting list. Additionally, NMHC may also remove an applicant's name if the written invitation is returned by the post office and marked "undeliverable."

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-420 Selection and Admission from the Waiting List

Applicants shall be selected in the order of date and time of the initial application with consideration given to HUD's income targeting requirements as well as agency preference policies as adopted by NMHC.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-425 Removing Applicants from the Waiting List

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NMHC may remove an applicant from the program's waiting list for the following reasons:

- (a) An applicant requests that his/her name be removed;
- (b) An applicant fails to respond to a written request for information updating;
- (c) An applicant fails to respond to a written request declaring his/her continued interest;
- (d) An applicant no longer meets the program's eligibility criteria.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-430 Special Admissions/Non-Waiting List Admissions (HCV Program Guidebook 7420-10G: Special Admissions/Non-Waiting List Admissions)

- (a) HUD may award NMHC special program funding that is targeted for families living in specified units. (24 CFR § 982.203) For instance, special housing choice voucher program funding can be targeted to:
 - (1) Families displaced because of demolition or disposition of a public housing development;
 - (2) Families residing in a multifamily rental housing project when HUD sells, forecloses, or demolishes the project;
 - (3) For housing covered by the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), non-purchasing families residing in a project subject to a homeownership program or families displaced because of a mortgage prepayment or voluntary termination of a mortgage insurance contract;
 - (4) Families residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term; and
 - (5) Non-purchasing families residing in a HOPE I or HOPE II project.
- (b) If HUD awards program funding that is targeted for families living in specified units, NMHC must use the assistance for the families living in these units. NMHC must maintain records showing that the family was issued a HUD-targeted voucher.
- (c) Unit leased by non-waiting list admissions are not counted when calculating NMHC's performance under SEMAP Indicator 1.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission inserted a comma after the word "forecloses" in subsection (a)(2) pursuant to 1 CMC § 3806(g).

§ 100-90-435 Grounds for Denial (24 CFR §§ 982.552 and 982.553)/Termination

- (a) Mandatory Denial or Termination. NMHC shall deny or terminate assistance to applicants/participants for the following reasons:
 - (1) If a member of the family refuses to sign and submit HUD or NMHC required consent forms for obtaining information.

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- (2) If a member of the family has been arrested, charged, or convicted of illegal possession, manufacturing, or distribution of a controlled substance.
- (3) If no member of the family is a U.S. citizen or eligible immigrant.
- (4) If the family is under contract and 180 days have elapsed since the NMHC's last housing assistance payment was made.
- (5) If any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. NMHC shall deny assistance to any member of the household determined to be registered sex offender under a state sex offender registration program regardless of determination showing a lifetime registration or not.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word "state" in subsection (a)(5) pursuant to 1 CMC § 3806(f).

§ 100-90-440 Notification of Adverse Actions

NMHC shall provide a family (applicant or participant) a written notice that states:

- (a) The reason(s) for the adverse action;
- (b) The effective date of the adverse action;
- (c) The family's right, if they disagree, to request for an informal review or hearing to be held before the effective date of the adverse action.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Part 500 - Housing Quality Standards (HQS)

§ 100-90-501 General

Housing Quality Standards (HQS) are HUD's minimum pre-qualifying standards required of landlords/owners who wish to have their units registered under the program's approved landlord registry. HQS is designed to ensure that the registered and participating unit is decent, safe, and sanitary. HQS is required for both initial occupancy and during the duration of the lease term. NMHC will make available to the public the list of HQS requirements and print brochures of landlord and tenant responsibilities with respect to complying with HQS requirements and violation penalties.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words "landlord" and "tenant" pursuant to 1 CMC § 3806(f).

§ 100-90-505 Pre-Contract and Periodic HQS Inspections (24 CFR § 982.405(a))

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(a) The NMHC must inspect the unit leased to a family prior to the initial term of the lease, at least annually during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS.

(b) Rent Reasonableness [See § 100-90-910].

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 100-90-510 Annual HQS Inspections (HCV Program Guidebook 7420-10G: Annual Inspection Process and Procedure)/Abatement and Termination

(a) The annual inspection process includes scheduling the unit for inspection, notifying owners and tenants of the inspection date and time, conducting the inspection, enforcing HQS requirements, and when necessary, taking action to abate payments and terminate HAP contracts and program assistance. Inspection requirements are as follows:

- (1) The unit must be in compliance with HQS requirements throughout the assisted tenancy.
- (2) Each unit must be inspected annually during assisted tenancy to determine if the unit meets HQS. The inspection must be conducted within twelve months of the previous inspection to meet Section Eight Management Assessment Program (SEMAP) requirements.
- (3) NMHC shall notify owners and tenants of HQS deficiencies in writing, and indicate a time period in which to make HQS corrections so that the agency complies with SEMAP requirements.

(b) Abatement of Housing Assistance Payments. NMHC must abate housing assistance payments to the owner for failure to correct an HQS violation under the following circumstances:

- (1) An emergency (life-threatening) violation is not corrected within 24 hours of inspection and the PHA did not extend the time for compliance;
- (2) A routine violation is not corrected within 30 days of the inspection and NMHC did not extend the time for compliance;
- (3) Except in the case of life threatening violations requiring corrections within 24 hours, the owner must receive 30-day written notification of the abatement;
- (4) Abatements must begin on the first of the month following the failure to comply.

(c) Termination of HAP Contract. NMHC must terminate the HAP contract if the repairs are not made. Abatements of payments lasting six or more months shall constitute an automatic termination of the HAP contract. NMHC shall not terminate the contract until the family finds another unit provided the family does so in a reasonable time.

(d) Termination of Program Assistance. NMHC shall terminate program assistance to families who fail to correct HQS deficiencies that they caused. NMHC shall notify the owner of its intent to terminate the family's program participation and assistance so that the owner can begin eviction procedures. NMHC shall continue to pay the owner until the eviction is completed.

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History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

§ 100-90-515 Quarterly HQS Inspections/Abatement and Termination

(a) The quarterly inspection process includes scheduling the unit for inspection, notifying owners and tenants of the inspection date and time, conducting the inspection, enforcing HQS requirements, and when necessary, taking action to abate payments and terminate HAP contracts and program assistance.

(1) The quarterly HQS inspections complement Annual and Special HQS inspections and are intended to ensure that Section 8 assisted units are in compliance with HQS requirements throughout the assisted tenancy.

(2) Units must be inspected quarterly during assisted tenancy to determine that Section 8 assisted units are in compliance with HQS requirements.

(3) NMHC shall notify owners and tenants of HQS deficiencies in writing, and indicate a time period in which to make HQS corrections so that the agency complies with SEMAP requirements.

(b) Abatement of Housing Assistance Payments. NMHC must abate housing assistance payments to the owner for failure to correct an HQS violation under the following circumstances:

(1) An emergency (life-threatening) violation is not corrected within 24 hours of inspection and the PHA did not extend the time for compliance;

(2) A routine violation is not corrected within 30 days of the inspection and NMHC did not extend the time for compliance.

(3) Except in the case of life threatening violations requiring corrections within 24 hours, the owner must receive 30-day written notification of the abatement.

(4) Abatements must begin on the first of the month following the failure to comply.

(c) Termination of HAP Contract. NMHC must terminate the HAP contract if the repairs are not made. Abatements of payments lasting six or more months shall constitute an automatic termination of the HAP contract. NMHC shall not terminate the contract until the family finds another unit provided the family does so in a reasonable time.

(d) Termination of Program Assistance. NMHC shall terminate program assistance to families who fail to correct HQS deficiencies that they caused. NMHC shall notify the owner of its intent to terminate the family's program participation and assistance so that the owner can begin eviction procedures. NMHC shall continue to pay the owner until the eviction is completed.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

§ 100-90-520 HQS Quality Control (24 CFR § 985.3(e))/Re-Inspection of Units

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- (a) NMHC's manager for the program and housing division or other qualified person (24 CFR § 985.3(e)(1)) must re-inspect a sample of units under contract during the last fiscal year.
- (b) Completed HQS inspections included in the sample must be no older than three months old at the time of the re-inspection. The sample must represent a cross section of neighborhoods where the program units are located and inspections completed by all HQS inspector(s).

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-522 Verification of HQS Deficiency Correction (PIH 2012-15)

If NMHC determines that a unit does not meet HQS requirements during an annual, quarterly, or special inspection, aside from a re-inspection/follow-up inspection, verification of the correction of deficiencies may also be obtained by the following means:

- (a) Owner's certification,
- (b) A receipt from a vendor,
- (c) A photo of the repair, or
- (d) Tenant confirmation that required repairs were completed, followed by the verification of that action at the next on-site inspection.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014).

Commission Comment: This section did not appear in the initial proposal of this chapter (35 Com. Reg. 34400 (Oct. 28, 2013)). It was added in the Notice of Adoption.

§ 100-90-525 HQS Enforcement

Part 982 does not create any right of the family, or any party other than HUD or the PHA, to require enforcement of the HQS requirements by HUD or the PHA, or to assert any claim against HUD or the PHA, for damages, injunction or other relief, for alleged failure to enforce the HQS. (24 CFR § 982.406).

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-530 Applicability of CNMI Building Safety Code

Commercial units registered under NMHC's Section 8 Housing Choice Voucher Program shall be subject to the requirements of the CNMI's Building Safety Code upon the adoption of the aforesaid Code by the Northern Marianas Housing Corporation's Board of Directors and the approval of the U.S. Department of Housing and Urban Development as prescribed by 24 CFR §

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982.401 (a)(4)(i)[†] and (4)(ii)(A).^{††} See Appendix C for CNMI Building Safety Code Rules and Regulations as published in the Commonwealth Register, Volume 31, Number 05, May 20, 2009 and as certified and adopted in the Commonwealth Register, Volume Number 08, August 27, 2009.

[†] (4)(i) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria variations in this section, unless variations are approved by HUD.

^{††} (4)(ii) HUD may approve acceptability criteria variations for the following purposes: (A) Variations which apply standards in local housing codes or other codes adopted by the PHA.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The text marked with daggers was originally located in footnotes. The Commission moved it to the body of the section pursuant to 1 CMC § 3806(a).

Part 600 - Determination of Family Income

§ 100-90-601 Annual Income

(a) Annual income is the gross or total income, monetary or not, a family is anticipated to receive from a source outside the family in the 12 months following admission or reexamination minus allowable exclusions. See 24 CFR 5.609. Income from all sources of each member of the household who is eighteen years or older shall be counted.

(b) Annual income does not include income that is excluded by regulation.

(c) NMHC must include the income of every person listed on the lease, including those temporarily absent from the household.

(d) The income of a temporarily absent spouse[†] must be included in determining annual income. The income of permanently absent family members is not considered.

[†] NMHC defines a temporarily absent spouse to be a program participant who is absent from the assisted unit for a period not to exceed six months.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a). The Commission struck the figures “18” from subsection (a) and “6” from the daggered sentence pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the words “annual income” pursuant to 1 CMC § 3806(f). The text marked with daggers was originally located in footnotes. The Commission moved it to the body of the section pursuant to 1 CMC § 3806(a).

§ 100-90-605 Determining Adjusted Income

Deductions and allowances are amounts that are subtracted from a family’s annual income to produce adjusted income.

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(a) Annual Income Inclusions. Annual income includes all amounts anticipated to be received by the household in the 12 months following certification or reexamination. Annual income includes:

- (1) Income which goes to, or on behalf of, the family head or spouse or to any other household member;
- (2) Amounts, monetary or not, anticipated to be received from a source outside the family during the 2-month period following admission or reexamination effective date;
- (3) Income from assets to which any member of the family has access.
- (4) Therefore, annual income includes, but is not limited to the following:
 - (i) Wages and salaries;
 - (ii) Net business income;
 - (iii) Payments in lieu of earnings;
 - (iv) Public assistance;[†]
 - (v) Imputed welfare income (24 CFR 5.615);
 - (vi) Periodic payments and allowances;^{††}
 - (vii) Lump sum receipts;
 - (viii) Determinable allowances and regular cash contributions;
 - (ix) Armed Forces pay;
 - (x) Income of dependents; and
 - (xi) Income of temporarily absent family members.

(b) Annual Income Exclusions. In determining a family's adjusted income, some amounts are prohibited from being included in a family's income for rent determination purposes. These amounts, called exclusions, are not part of annual income. Family annual income derived from the following shall be excluded:

- (1) Wages of family members under age 18;
- (2) Earnings in excess of \$480 for full-time students over age 18 (except HoH or spouse);
- (3) Refunds or rebates of property tax on home;
- (4) Payments for student financial assistance paid directly to the student or educational institution (24 CFR Part 5, 880 and 883);
- (5) Lump-sum additions to family assets;
- (6) Lump-sum payments of deferred benefits;
- (7) Amounts set aside for use under PASS;^{†††}
- (8) Temporary, non-recurring, sporadic income;
- (9) Amounts received for reimbursements of medical expenses of any family member;
- (10) Income of live-in aides;
- (11) Adoption assistance payments in excess of \$480 per child of adoption assistance payments;
- (12) Payments to keep developmentally disabled family members at home;
- (13) Payments received for the care of foster children or adults;
- (14) Armed Forces hostile fire pay;
- (15) Foreign government reparation payments;
- (16) Earnings and benefits from employment training programs funded by HUD;
- (17) Incremental earnings and benefits from participation in qualifying state and local employment programs;

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- (18) Reimbursement for out of pocket expenses while attending a public assisted training program;
 - (19) Resident service stipend not to exceed \$200 per month for services to NMHC; and
 - (20) Other applicable federally mandated exclusions.
- (c) Deductions from Annual Income.
- (1) Mandatory Deductions and Allowances.
 - (i) \$480 for each dependent;^{††††}
 - (ii) \$400 for any elderly family or disabled family;
 - (iii) Un-reimbursed child care expenses necessary to enable a family member to work, actively seek employment or further his/her education;
 - (iv) Disability assistance expenses;^{††††††}
 - (v) Un-reimbursed medical expenses in excess of 3% of annual income of elderly/disabled families.
 - (2) Allowable Medical Expenses.
 - (i) Non-Prescription Medicines: Non-prescription medicines must be recommended by a medical physician in order to be considered a medical expense.
 - (ii) Alternative Medicine: Acupressure, acupuncture, related herbal medicines, and chiropractic services will be considered allowable medical expenses if verified by a medical physician.
 - (3) Childcare Expenses. Child care expenses for children under the age of thirteen, including foster children, may be deducted from annual income if they enable an adult to work or attend school full time. Deductions for child care expenses will be allowed based on the following situations:
 - (i) Child care to work: The maximum child care expense allowed must be less than the amount earned by the person enabled to work.
 - (ii) Child care for school: The number of hours claimed for child care may not exceed the number of hours the family member is attending school.
 - (iii) The deduction is not given if the child care expenses are paid for or reimbursed by an agency or person outside the household. If the expense is incurred to enable a family member to work, the expense cannot exceed the amount earned.
 - (iv) When two or more adult household members work, NMHC defines the “person enabled to work” as the one who earns the least unless it is obvious that another household member is enabled to work.
 - (v) If childcare expense is required for both work and education, NMHC shall prorate the time and expense to assure that the portion attributable to employment does not exceed the amount earned.
 - (vi) Rate of expense: NMHC will survey the local care providers in the community as a guideline. The weekly expense for child care shall not exceed comparable practice.

[†] Public assistance includes Temporary Assistance to Needy Families (TANF) or general assistance.

^{††} Amounts received from Social Security, Supplemental Income, annuities, insurance policies, retirement funds, pensions, disability or death benefits, alimony or spousal support, child support, or other types of periodic receipts.

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††† Amounts received by a person with a disability that are disregarded for a limited time for purposes of SSI eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) are excluded in the calculation of annual income.

†††† The Head of Household (HoH), spouse of the HoH, foster children/adults, and live-in aides or spouses and dependents of live-in aides are never considered dependents.

††††† Disability assistance expenses are costs incurred for care attendant or auxiliary apparatus that are necessary in order for an adult member of the household, including the disabled person, to work.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission made extensive corrections to capitalization in this section pursuant to 1 CMC § 3806(f). The Commission struck the figure “13” from subsection (e) pursuant to 1 CMC § 3806(e). The Notice of Adoption made a correction to subsection (b)(19).

Part 700 - Reasonable Accommodations

§ 100-90-701 General (PIH Notice 02-I)

When a family member requires an accessible feature(s) or policy modification to accommodate a disability, NMHC must provide such feature(s) or policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such feature(s) would result in a financial and administrative burden, NMHC is required to take any other action that would not result in an undue burden. NMHC is required to institute reasonable adjustments to its rules, policies, practices, and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the unit, the common areas of a dwelling, or participate in or access other activities conducted/sponsored by the recipient.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission inserted a comma after the word “dwelling” pursuant to 1 CMC § 3806(g).

Part 800 - Leasing and Occupancy Standards

§ 100-90-801 Determining Unit Size of Each Voucher (Voucher Size)

(a) NMHC does not determine who shares a bedroom/sleeping room. NMHC’s occupancy standards for determining unit size of each voucher or voucher size shall be applied in a manner consistent with Fair Housing guidelines. All standards in this section relate to the number of bedrooms stated on the voucher, not the family's actual living arrangements. The unit size on the voucher remains the same as long as the family composition remains the same, regardless of the actual unit size rented.

(b) NMHC assigns one bedroom to two people within the following guidelines:

(1) Persons of different generations, persons of the opposite sex (other than spouses or co-heads) children over 3 years of age and unrelated to the adult household members shall be afforded a separate bedroom;

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- (2) Live-in aides shall be provided a separate room; and
- (3) Single person families shall be allocated an efficiency or one bedroom unit.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-805 Guidelines Table for Determining Voucher Size

Voucher Size	Person in Household	
	(Minimum #)	(Maximum #)
0 Bedroom	1	1
1 Bedroom	1	2
2 Bedrooms	2	4
3 Bedrooms	3	6
4 Bedrooms	4	8
5 Bedrooms	6	10
6 Bedrooms	8	12

(b) Exemptions from Occupancy Standards. NMHC shall grant exemptions from the standards if the family requests and NMHC determines the requests are justified by relationship, age, sex, health, or disability of family members or under any other individual or exigent circumstances.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-810 Briefing

(a) A full HOD-required briefing will be conducted for applicant families who are determined to be eligible for assistance. The briefings will be conducted in group meetings.

(b) The purpose of the briefing is to explain the documents in the voucher holder's packet to families so that they are fully informed about the program. This will enable them to utilize the program to their advantage and it will prepare them to discuss it with potential owners and property managers.

(c) NMHC will not issue a voucher to a family unless the head of household has attended a briefing and signed the voucher. Applicants who provide prior notice of inability to attend a briefing will automatically be re-scheduled for another or the next briefing. Applicants who fail to attend two scheduled briefings, without a valid reason, may be denied assistance.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission struck the figure “2” from subsection (c) pursuant to 1 CMC § 3806(e).

§ 100-90-815 Briefing Packet

(a) The documents and information provided in the briefing packets for the voucher programs must comply with all HUD requirements. NMHC may also include other pertinent information and/or materials which are not required by HUD.

(b) The briefing packet shall contain the following items:

(1) The term of the voucher;

(2) A description of the method used to calculate the assistance payment and utility allowances;

(3) The HUD lease addendum and NMHC sample lease;

(4) The Request for Lease Approval (RFLA) and a description of the procedure requesting approval for a unit;

(5) The subsidy standards and the voucher size relates to the unit size selected;

(6) The HUD brochure on lead-based paint hazards;

(7) Information on federal, Commonwealth, and local equal opportunity laws including a pamphlet entitled, “Fair Housing, It’s Your Right;” the form for reporting suspected discrimination;

(8) A list of landlords other parties willing to lease a assisted families or help in the search;

(9) If a family includes a person with disabilities, NMHC shall provide a list of available accessible units;

(10) The family obligations under the program;

(11) The grounds for termination of assistance because of family action or failure to act; and

(12) Information on informal hearings, hearing procedures, and portability.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words “informal hearings” in subsection (b)(12) pursuant to 1 CMC § 3806(f).

§ 100-90-820 Issuance of Vouchers

(a) Eligible Applicants/Funding Availability. When funding is available, NMHC shall issue vouchers to eligible applicants ranked highest on the program’s waiting list and who are deemed to be income eligible at the time of the actual issuance date. The issuance of vouchers must be within the dollar limitations as set by the ACC budget.

(b) Voucher and Contractual Agreement. During the briefing sessions, each household will be issued a voucher which shall represent a contractual agreement between NMHC and the family specifying the rights and responsibilities of each party. The voucher does not constitute admission to the program which occurs when the lease and contract become effective.

(c) Expiration of Voucher after Issuance.

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- (1) The voucher is valid for a period of sixty calendar days from the date of the issuance. The family must submit a Request for Lease Approval within the sixty day period.
- (2) If the voucher has expired and has not been extended by NMHC or expires after the extension, the family will be denied assistance. The family will not be entitled to a review hearing.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of subsection (c) of the original regulation were undesignated. The Commission designated the paragraphs as subsections (c)(1) and (c)(2) pursuant to 1 CMC § 3806(a). The Commission struck the figure “60” from subsection (c)(1) pursuant to 1 CMC § 3806(e).

§ 100-90-825 Term and Extensions on Unit Searching (HCV Program Guidebook 7420-10G: Extensions of Search Time)

- (a) NMHC reserves the authority to grant extensions of search time and to determine the length of an extension and the circumstances under which extensions will be granted. If NMHC grants an extension, it shall provide written notice to the family. There shall be no time set on the number of extensions NMHC can approve.
- (b) NMHC must approve an additional search term if needed as a reasonable accommodation to make the program accessible and usable by a person with disabilities. The extension period shall be reasonable for the purpose.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-830 Requests for Lease Approval

- (a) The Request for Lease Approval (RFLA) and a copy of the proposed lease must be submitted by the family during the term of the voucher.
- (b) The RFLA must be signed by both the unit owner and the voucher holder. The lease may be executed up to sixty days prior to contract execution and shall not be consummated without approval of NMHC.
- (c) NMHC shall not permit a family to submit more than one RFLA at a time.
- (d) NMHC shall review the documents to determine whether they are “approvable.” The Request for Lease Approval shall be approved IF:
 - (1) The unit is an eligible type of housing;
 - (2) The unit meets HUD’s Housing Quality Standards (and any additional local criteria as identified in this chapter);
 - (3) The contract rent is reasonable. Rent and utility allowance shall not exceed NMHC’s current payment standards, unless exceptions are granted;
 - (4) The security deposit is approvable; and

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(5) The proposed lease complies with HUD and NMHC requirements and applicable federal, state, and local laws governing the program.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a). The Commission struck the figures “60” from subsection (b) and “1” from subsection (c) pursuant to 1 CMC § 3806(e). The Commission substituted the phrase “this chapter” for “this Administrative Plan” in subsection (d)(2) pursuant to 1 CMC § 3806(d).

§ 100-90-835 Disapproval of Owner

(a) For the purposes of this section, “owner” includes a principal or other interested party.

(b) NMHC shall disapprove a registered owner or an owner in the process of registering his/her housing unit for the following reasons:

(1) HUD has informed NMHC that the owner has been disbarred, suspended, or subject to a limited denial of participation under 24 CFR part 24;

(2) HUD has informed NMHC that the federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending;

(3) HUD has informed NMHC that court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements;

(4) The owner has violated obligations under a housing assistance payment contract under section 8 of the 1937 Act;

(5) The owner has committed fraud, bribery, or any other corrupt act in connection with any federal housing program;

(6) The owner has engaged in drug trafficking;

(7) The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs or with applicable housing standards of units leased with project based Section 8 assistance or leased under any other federal housing program; or

(8) Conflict of Interest: NMHC shall not execute a HAP contract when the owner of the unit is a relative of the family to be assisted, unless approving such a tenancy would provide reasonable accommodation for a disabled family member.

(c) It is the policy of NMHC to recruit owners to participate in the program, and to provide owners with prompt and professional service in order to maintain an adequate supply of available housing throughout the jurisdiction of NMHC. These regulations define when NMHC must disallow an owner from participating in the rental assistance programs and HUD provides NMHC with discretion to disapprove or other restrict the participation of owners in certain categories.

(1) Owner Restrictions and Penalties – If an owner commits fraud or abuse or is guilty of frequent or serious contract violations, NMHC will restrict the owner from future participation in the rental assistance programs for a period commensurate with the seriousness of the offense. NMHC may also terminate some or all other HAP contracts with the owner.

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(2) Overpayment to Owners – If the owner has been overpaid as a result of fraud, misrepresentation, or violation of the Housing Assistance Payment Contract, NMHC may terminate the contract and arrange for restitution to NMHC and/or family as appropriate.

(3) NMHC will make every effort to recover any overpayments made as a result of landlord fraud or abuse. Payments otherwise due to the owner may be debited in order to repay NMHC or the tenant as applicable.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission inserted commas after the words “bribery” in subsection (b)(5) and “misrepresentation” in subsection (c)(2) pursuant to 1 CMC § 3806(g). The Commission corrected the spelling of the word “disabled” in subsection (b)(8) pursuant to 1 CMC § 3806(g). Subsection (c) did not appear in the October 2013 proposed regulations. It was added in the February 2014 Notice of Adoption.

Part 900 Housing Subsidy, Tenant Rent and Payment Standards

§ 100-90-901 General (HCV Program Guidebook 7420-10G: Calculating Rent and HAP Payments)

The determination of the family’s share of total housing costs and NMHC’s housing assistance payment (HAP) is a two step process. When the housing choice voucher is issued, the applicant or participant must be given information on the minimum the family is expected to contribute to the housing costs and the maximum subsidy that the PHA can pay. Because the family has the option of selecting a unit with a rent that is more or less than NMHC’s payment standard, the final calculation of the family’s share of the housing costs and the HAP amount cannot be completed until the family has selected a unit.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-905 Payment Standards

(a) NMHC is required to establish payment standard amounts for each unit size in an FMR area. The payment standard amounts may be within several ranges depending on facts about the rental market. (HCV Program Guidebook 7420-10G: Establishing Payment Standard Amounts.)

(b) NMHC currently administers a payment standard that is at 90% of the published FMR set for Guam and the Pacific Islands.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-910 Rent Reasonableness (24 CFR § 982.507)

(a) NMHC may not approve a lease until it determines that the initial rent to owner is a reasonable rent.

(b) Redetermination of Reasonable Rent. The PHA must re-determine the reasonable rent:

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- (1) Before any increase in the rent to owner;
 - (2) If there is a five percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary; or
 - (3) If directed by HUD.
 - (4) The NMHC may also re-determine the reasonable rent at any other time.
- (c) Rent to Owner May Not Exceed Reasonable Rent. At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or re-determined by the NMHC.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a).

§ 100-90-915 Comparability (24 CFR § 982.507)

- (a) NMHC must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the NMHC must consider:
- (1) The location, quality, size, unit type, and age of the contract unit; and
 - (2) Any amenities, housing services, maintenance, and utilities to be provided by the owner in accordance with the lease.
- (b) Owner Certification of Rents Charged. By accepting each monthly housing assistance payment from NMHC, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give NMHC information requested by NMHC on rents charged by the owner for other units in the premises or elsewhere.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission inserted a comma after the word “maintenance” in subsection (a)(2) pursuant to 1 CMC § 3806(g).

§ 100-90-920 Rent Calculations

- (a) Calculating Total Tenant Payment (TTP).
- (1) The TTP must be calculated for each family. The TTP represents the minimum amount a family must contribute toward rent and utilities regardless of the unit selected.
 - (2) The TTP is calculated using a statutory formula and the individual income information.
 - (3) TTP equals the greater of:
 - (i) 10% x monthly income;
 - (ii) 30% x monthly income;
 - (iii) Minimum rent; or
 - (iv) Welfare rent (in as paid states).

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(b) Gross Income/Source Codes.

(1) Gross income to the household includes that which is excluded by law, regulation, HUD Notice and local policy.

(2) Use of source codes found on Form HUD-50058 to report all income to the household, including excluded amounts.

- (i) B = Own business
- (ii) F = Federal wage
- (iii) HA = Pha wage
- (iv) M = Military pay
- (v) W = Other wage
- (vi) G = General assistance
- (vii) IW = Imputed welfare income
- (viii) T = TANF assistance
- (ix) P = Pension
- (x) S = SSI
- (xi) SS = Social Security
- (xii) C = Child support
- (xiii) E = Medical reimbursement
- (xiv) I = Indian trust/per capita
- (xv) N = Other nonwage sources
- (xvi) U = Unemployment benefits

(c) Annualizing Income. If income is received multiplied by:

- | | |
|-----------------------|------|
| (1) Semi-annually | 2 |
| (2) Monthly | 12 |
| (3) Semi-monthly | 24 |
| (4) Bi-weekly | 26 |
| (5) Weekly | 52 |
| (6) Hourly (40hrs/wk) | 2080 |

(d) Annual Income. To arrive at annual income for each family:

- (1) Subtract excluded amounts from gross income.
- (2) Add income from assets.
- (3) Balance equals annual income per year.

(e) Annual Adjusted Income. From annual income, subtract total allowances and deductions, as shown below:

- (1) \$400 per elderly/disabled household
- (2) \$480 per dependent
- (3) Allowable child care
- (4) Allowable disability assistance expense
- (5) Allowable medical expenses

(f) Monthly Adjusted Income. Monthly adjusted income equals annual adjusted income divided by 12.

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(g) Rent to Owner and Gross Rent/Rent Reasonableness

(1) The rent to owner is the rent the owner is charging for the unit including any utilities the owner provides under the lease. NMHC must determine whether the rent is reasonable pursuant to Section 8 and SEMAP regulations. NMHC must have a policy and procedure for determining rent reasonableness which considers the following nine factors:

- (i) Type of unit
- (ii) Quality of the property
- (iii) Location
- (iv) Size
- (v) Age
- (vi) Utilities included in rent
- (vii) Housing services provided
- (viii) Maintenance
- (ix) Amenities

(2) Rent reasonableness must be documented in the tenant file for the initial rent, any time the landlord requests an increase in rent, and when required by HUD.

(3) A utility allowance is calculated for each family based on NMHC's schedule of average utility consumption by unit size for each of the family paid utilities.

(4) The gross rent represents the entire housing cost. It is calculated by adding the rent to owner and the utility allowance for the unit. If all utilities are included in the rent, the rent to owner and the gross rent will be the same.

Example	Gross Rent Calculation
Rent to owner	\$300
Plus utility allowance	\$125
Gross rent	\$425

(h) Calculating the Housing Assistance Payment (HAP).

(1) The actual HAP payment cannot be calculated until the family has selected a unit and the gross rent for the unit is known.

(2) The subsidy cannot exceed the maximum subsidy but may be less than the maximum subsidy if the gross rent for the unit is less than the payment standard amount.

(3) The HAP is the lower of:

- (i) The payment standard for the family minus the TTP; or
- (ii) The gross rent minus the TTP.

Example	HAP Payment Calculation
Payment standard	\$450
TTP	\$210

(4) If the payment standard is \$450 and the gross rent of the selected unit is \$425, using the TIP of \$210 the HAP would be the lower of:

Payment standard minus TTP	(\$450-\$210)	\$240
Or gross rent minus TTP	(\$425-\$210)	\$215
HAP equals		\$210

(5) If the gross rent of the selected unit is \$500, the HAP would be the lower of

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Payment standard minus TTP	(\$450-\$210)	\$240
Or gross rent minus TTP	(\$500-\$210)	\$290
HAP equals		\$240

(i) Family Share.

(1) The family share is the family's contribution toward the gross rent. The family share cannot be calculated until a unit is selected.

(2) The family share will be the TTP or a higher amount, depending on the unit the family selects. For a family leasing a unit with a gross rent at or below the payment standard for the family, the family share will be the same as the TTP.

(3) If a family leased a unit with a gross rent above the payment standard for the family, the family share will be the TTP plus the amount by which the gross rent exceeds the payment standard.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (i) pursuant to 1 CMC § 3806(a). The Commission corrected capitalization throughout the section pursuant to 1 CMC § 3806(f).

§ 100-90-925 Maximum Subsidy

The maximum subsidy payable by the PHA is the payment standard minus the TTP. The maximum subsidy calculation is done at the same time the family is issued a housing choice voucher. The actual subsidy can be calculated only after the family has selected a specific unit.

Example:	Maximum Subsidy Calculation
Payment Standard:	\$450
Minus TTP:	\$210
Maximum Subsidy	\$240

In the preceding example, the family must pay \$210 and may pay up to, but no more than, \$240 towards rent and utilities.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-930 Minimum Rent (HCV Program Guidebook 7420-10G: Minimum Rent)

(a) The Public Housing Reform Act of 1998 makes permanent a minimum rent requirement between \$0 and \$50. NMHC charges a minimum rent of \$25.00 per month, except in cases of financial hardship. A family whose TTP has been set at the minimum rent may receive a utility reimbursement.

(b) Financial Hardship Exemption from Minimum Rent. NMHC shall grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship. Financial hardship includes these situations:

(1) NMHC shall promptly determine whether a qualifying hardship exists and whether it is temporary or long term;

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- (2) When the family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program, including a family that includes a member who is a non-citizen 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;
- (3) When the family would be evicted because it is unable to pay minimum rent;
- (4) When the income of the family has decreased because of changed circumstances, including loss of employment; and
- (5) Other circumstances determined by NMHC or HUD.

(c) Requesting a Hardship Exemption.

- (1) If a family requests a financial hardship exemption, NMHC shall suspend rent requirement beginning on the month following the family's request for a hardship exemption until NMHC determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.
- (2) Promptly determine whether a qualifying hardship exists and whether it is temporary or long term.
- (3) If NMHC determines that a qualifying financial hardship is temporary, NMHC shall not impose the minimum rent during the ninety day period beginning on the month following the date of the family's request for a hardship exemption. At the end of the ninety day suspension period, NMHC must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by NMHC, for the amount of back rent owed by the family.
- (4) If NMHC determines there is no qualifying financial hardship exemption, NMHC shall reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by NMHC.
- (5) If NMHC determines that a qualifying hardship is long term, NMHC shall exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.
- (6) The financial hardship exemption shall only apply to payment of the minimum rent and not to the other elements used to calculate the total tenant payment (as determined pursuant to HUD regulation).

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission inserted the word "a" where appropriate in subsection (b)(2) pursuant to 1 CMC § 3806(g). The Commission struck the figure "90" from subsection (c)(3) pursuant to 1 CMC § 3806(e).

§ 100-90-935 Rent Adjustments

- (a) Rent adjustments to owners under the voucher program are allowed and are effective on the anniversary date of the HAP Contract (unless the unit fails the HQS inspection at the time the request is made) one time per year or the first of the next month subsequent to the owner's request. Owners must request the rent adjustment in writing. If the request is not received within 60 days prior to the anniversary date, NMHC shall not approve an annual adjustment for that year.

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(b) Rent Increases. All rent increases must pass the rent reasonableness test and may not exceed the adjustment factor as published annually by HUD (even if justified by rent reasonableness) or NMHC's payment standards.

(c) Disapproval of Requests for Adjustment. If NMHC rejects the owner's request for rent adjustment as exceeding rent reasonableness and the owner rejects NMHC's determination, the owner may offer the tenant a new lease (after receiving NMHC's approval with a sixty-day notice to the tenant). If the tenant refuses or the owner does not offer a new lease, the owner may terminate tenancy for a business or economic reason in accordance with the lease after giving 60 days notice to NMHC and the family as required by program regulations, NMHC will then issue a new voucher to the family.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words "adjustment factor" in subsection (b) pursuant to 1 CMC § 3806(f).

§ 100-90-940 Utility Allowances

(a) NMHC shall maintain a utility allowance schedule that will be determined based on bedroom sizes and unit types (i.e. single family dwellings, apartments with different bedroom sizes, row-houses, etc.) that are common for the jurisdiction NMHC serves pursuant to 24 CFR 982.517 (3).

(b) NMHC shall review the utility allowance schedule annually and revise a utility category when there is a change of 10% or more in the utility rate since the last utility allowance schedule was set.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a).

§ 100-90-945 Utility Reimbursements

(a) The amount of the utility reimbursement is the amount by which the Housing Assistance Payment exceeds the rent to owner. Where there is a utility reimbursement, NMHC pays the full amount of the rent to the owner and sends the utility reimbursement payment (URP) to the family or the utility company.

(b) CUC Billing Receipt and Annual History Report. NMHC shall notify all tenants participating under the Housing Choice Voucher Program (HCVP) that the agency will be requiring each tenant to provide one of the following:

(1) For tenants receiving a URP check: Every HCVP participant must provide a copy of the family's previous month's billing receipt from the Commonwealth Utilities Corporation (CUC) on a monthly basis. Failure to provide NMHC with a copy of a previous month's CUC billing

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receipt shall result in NMHC withholding a tenant's URP check until the billing receipt is submitted.

(2) For tenants not receiving a URP check: HCVP families must provide a copy of their recent annual history report for the last twelve months from the Commonwealth Utilities Corporation on an annual basis. Failure to provide NMHC with a family's CUC annual history may delay a family's annual recertification process.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) and (b) pursuant to 1 CMC § 3806(a). The Commission struck the figures "1" from subsection (b) and "12" from subsection (b)(2) pursuant to 1 CMC § 3806(e).

Part 1000 - Portability (HCV Program Guidebook 7420-10G: Portability)

§ 100-90-1001 General

(a) An eligible family that has been issued a housing choice voucher may use that voucher to lease a unit anywhere in the United States where there is a housing agency operating a housing choice voucher program. This feature of the program is referred to as portability.

(b) The Public Housing Agency (PHA) that issues the voucher to a portable family that wants to move to a different jurisdiction is referred to as the "initial" PHA. The PHA in the jurisdiction to which the family wishes to relocate is called the "receiving" PHA.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1005 Portability Procedures

(a) Providing Family the Information About Portability. NMHC is required to inform families about portability. The oral presentation at each voucher briefing must include information about where a family may lease including information about portability. The briefing packet provided to families must include information about portability opportunities and procedures.

(b) Determining Family Eligibility.

(1) Program Requirements for Families New to the Housing Choice Voucher Program

(i) A family that has not yet leased a unit under the housing choice voucher program is eligible for portability if the head of household or spouse was a resident of the PHA's jurisdiction at the time the application for assistance was submitted. A "resident," for the purpose of determining eligibility for portability, is a person who has legal domicile in the jurisdiction.

(ii) A non-resident family may be required to initially lease a unit with its housing choice voucher in the issuing PHA's jurisdiction. However, the initial PHA has the authority but not obligated to allow a new voucher holder that was not living in its jurisdiction at the time of application to exercise portability. The initial PHA may decide to allow portability for a family new to its jurisdiction in certain instances, such as when the move would respond to a special

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family need but not allow such moves in other instances. It is important for the PHA to document the reasons for discretionary decisions to avoid any perception of discrimination.

(iii) A regular admissions family exercising portability when it uses its voucher for the first time must be within the application income limits for the jurisdiction in which the family initially leases a unit. If the family is issued a voucher under a special admission, the income limits dictating eligibility for the special admission voucher are applicable for the jurisdiction in which the family initially leases a unit.

(2) Program Requirements for Participant Families

(i) A participant family electing to move to another jurisdiction with its voucher is eligible to do so but only when the family is able to move out of its current program unit under the terms of the family's lease. A family is not eligible for portability if the family has moved out of its assisted unit in violation of the lease.

(ii) When a participant family chooses to move using portability, the initial PHA should review the family's lease to determine the termination provisions and the length of notice required. The PHA should review a copy of the family's written notice to the owner of its intention to vacate. If the owner has agreed to an early lease termination, the PHA may require a written statement from the owner.

(iii) Income limits do not affect the eligibility of a participant family exercising portability; however, the family's TIP must be less than the payment standard at the receiving PHA for the family to lease within that PHA's jurisdiction.

(c) Initial PHA's Responsibilities

(1) The initial PHA determines eligibility for the housing choice voucher program based on its admission policies. The family is expected to initiate the portability process by informing the initial PHA of its interest in moving to another jurisdiction (porting out).

(2) After the family announces its interest in portability, the initial PHA must provide the family with information to help it contact the PHA in the jurisdiction where the family wishes to live. If this will be the family's first lease under the housing choice voucher program, the initial PHA must also compare the family's income to the applicable-income limit (typically the very low-income limit) for the community where the family wants to move and determine if the family will be able to lease up in that jurisdiction. Addresses and telephone numbers for PHAs around the country are available on HUD's website: www.hud.gov. Income limits are available at www.huduser.org.

(3) Family Portability Information Form - The initial PHA shall 1) contact the receiving PHA to alert that agency to expect the family; and 2) send the receiving PHA a completed form HUD 52665, Family Portability Information form. The portability information form has two parts: Part I is completed by the initial PHA and Part II by the receiving PHA. Copies of the family's voucher, the current HUD 50058 and supporting income verifications must be attached to the portability form. The receiving PHA may request but not require additional information. The PHA may transmit these documents by facsimile machine. The PHA initiating the transmittal maintains copies of all documents.

(4) Selecting the Receiving PHA - When there is more than one PHA administering a housing choice voucher program within the jurisdiction where the portable families wants to move, the initial PHA has the authority to select the receiving PHA.

(5) Providing More Than the Required Information - When transmitting the form HUD-52665, although not required, it may be helpful to the family, the receiving PHA, and the initial

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PHA to provide USCIS verification of citizenship and information from a criminal background check to the receiving PHA. Providing this information will require disclosure to the family. Some states limit what information from a criminal background check may be shared.

(6) **Monitoring Families Searching Other Communities** - It is helpful to know the number and status of families searching in other communities who may eventually lease up. Outgoing Portability is a processing log for tracking families searching elsewhere. The log can be maintained manually or electronically.

(d) **Receiving PHA Responsibilities**

(1) When the family arrives at the receiving PHA's office, the receiving PHA issues the family a housing choice voucher to enable the family to search in its jurisdiction. The housing choice voucher the receiving PHA issues may not expire before the expiration date established by the initial PHA. For extensions to the housing choice voucher term and the processing of requests for tenancy approval, however, the receiving PHA's policies must apply. In addition, the receiving PHA uses its own policies to determine the appropriate unit size for a family moving into its jurisdiction.

(2) The receiving PHA shall inform the initial PHA immediately whether it will absorb or administer the family's housing choice voucher assistance and if it approves an extension to voucher term or changes the unit size of the family's voucher.

(3) The receiving PHA's payment standards are used when the portable family leases a unit. The family will need to be informed of the receiving PHA's policies and payment standards before it begins its search.

(4) **Decision to Absorb or Administer.**

(i) The receiving PHA has the option to administer the subsidy for the initial PHA or to absorb the portable family into its own housing choice voucher program.

(ii) If the receiving PHA decides to administer the initial PHA's housing choice voucher assistance, the housing assistance for the portable family comes from the initial PHA's housing choice voucher allocation. The receiving PHA bills the initial PHA for the full housing assistance payment for the family's unit and for 80 percent of the ongoing administrative fee earned by the initial PHA for that unit.

(iii) If the receiving PHA decides to absorb the portable family, funds from the receiving PHA's consolidated ACC pay for the family's housing assistance. The initial PHA is free to reissue the voucher in cases where the receiving PHA has absorbed the family.

(5) **The Family Search.**

(i) The family's search for housing in the receiving PHA's jurisdiction is governed by the receiving PHA's policies. The receiving PHA issues a housing choice voucher of the size based on its own subsidy standards. Procedures relating to submitting the request for tenancy approval, obtaining an inspection and leasing a unit are all in accord with the receiving PHA's policies. The term of the housing choice voucher issued by the receiving PHA cannot expire before the date on the housing choice voucher issued by the initial PHA but may be later. The receiving PHA may also issue extensions based on its own policy and practices regardless of the initial PHA's policies.

(ii) The receiving PHA may require the family to participate in a briefing and cooperate in a reexamination of income but may not unduly delay the family's housing search. It would not be reasonable, for example, to require the family to wait for a monthly briefing that was not

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scheduled for another three weeks. The receiving PHA may delay leasing activities only to receive verification of information related to income eligibility.

(6) Annual and On-going Activities.

(i) After a family lease is up in the receiving PHA's jurisdiction, the receiving PHA is responsible for conducting all interim and annual reexaminations for the family and all HQS inspections of the family's unit.

(ii) Under the billing arrangement, the initial PHA must be informed of all changes affecting the household subsidy. After each interim and annual reexamination, the receiving PHA must send the initial PHA a completed form HUD-52665 showing the new HAP amount and copies of the form HUD-50058 and related income verifications if the billing amount changes.

(iii) Either the initial PHA or the receiving PHA may determine that it is necessary to terminate the family's assistance, and either PHA may issue a termination notice and conduct the informal hearing. If the initial PHA has initiated termination in an instance where there is a significant distance between the two jurisdictions, the PHA is encouraged to offer to conduct the informal hearing by telephone conference.

(iv) If the receiving PHA has absorbed the family, the family is no longer considered a portable family. The initial PHA is no longer involved with the family's subsidy. There is no billing and no communication on other details of the family's occupancy.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

Part 1100 - Moves with Continued Assistance

§ 100-90-1101 Procedures

(a) Allowable Moves. A family may move to a new unit if:

(1) The assisted lease for the old unit has terminated because NMHC has terminated the HAP contract for owner breach, or the lease was terminated by mutual agreement of the owner and the family; and

(2) The owner has given the family a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the family (unless assistance to the family will be terminated).

(b) Termination of Lease. Prior to terminating a lease with landlords, participants are required to inform and request NMHC in writing of their intention to terminate and the reasons behind the termination. Upon receiving approval from NMHC, the participants may begin informing their landlords (in writing) of their intent to terminate. NMHC shall provide a response within a reasonable time on whether it has approved or denied a participant's request for a unit transfer.

(c) Procedure for Moves: Notice Requirement

(1) Briefing sessions emphasize the family's responsibility to give the owner and NMHC proper written notice of any intent to move.

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(2) The family must give the owner at least thirty days (not to exceed sixty days) written notice of intent to vacate as specified in the lease and must give a copy to NMHC simultaneously.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission struck the figures “30” and “60” from subsection (c)(2) pursuant to 1 CMC § 3806(e).

§ 100-90-1105 Limitations and Restrictions

(a) Restrictions on Moves

- (1) Families will not be permitted to move within NMHC’s jurisdiction during the initial year of assisted occupancy;
- (2) Families shall be permitted to move only once in a 12-month period following the first year of tenancy;
- (3) NMHC shall deny permission to move if there is insufficient funding for continued assistance. Furthermore, NMHC shall deny permission to move if:
 - (i) The family has violated a family obligation;
 - (ii) The family owes NMHC back rent and/or the landlord back rent;
 - (iii) The family has moved or been issued a voucher twice within the last twelve months.

(b) Exceptions on Restrictions

- (1) The family has given proper notice of lease termination (if the family has a right to terminate the lease on notice to owner);
- (2) Relocation directed by NMHC;
- (3) Owner caused failed HQS, provided the tenant is in compliance with program regulations;
- (4) Verified hardship;
- (5) Family need for an accessible unit to accommodate a member’s disability;
- (6) Owner requested; or
- (7) Verified catastrophic disaster, i.e., floods.

(c) If a family is eligible to move, has not violated the family obligations or Lease Agreement, currently have active utility service in their name and does not owe NMHC money, the family will be offered a new voucher to search for another unit.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The final paragraph in the original regulation was undesignated. The Commission designated the paragraph as subsection (c) pursuant to 1 CMC § 3806(a). The Commission struck the figure “12” from subsection (a)(3)(iii) pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the word “family” in subsection (c) pursuant to 1 CMC § 3806(f). The February 2014 Notice of Adoption made amendments to subsection (a)(3)(ii).

§ 100-90-1110 Claims, Move-Out and Close-Out Inspections

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(a) Owner Claims. Under HAP Contracts, owners may make “special claims” for damages to the unit and for unpaid rent. The owner shall provide the tenant with these special claims and should the tenant fail to “cure” these claims, NMHC may terminate this tenant’s participation in the program.

(b) Move-Out and Close-Out Inspections. The owner must notify NMHC of the move-out and request a close-out inspection within ten days of learning of the move out in order to submit a damage claim against the tenant, unless the HAP contract was terminated due to owner breach.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission struck the figure “10” from subsection (b) pursuant to 1 CMC § 3806(e).

§ 100-90-1115 Continued Assistance for “Mixed Families”

(a) Under the Non-Citizen Rule, “mixed families” are families that include at least one citizen or eligible immigrant and any number of ineligible members.

(b) “Mixed families” shall continue receiving full assistance if they meet the following criteria:

(1) The head of household or spouse is a U.S. citizen or has eligible immigration status; and

(2) All members of the family other than the head of household, the spouse, parents of the head of household, parents of the spouse, and children of the head of household or spouse are citizens or eligible immigrants. The family may change the head of household to qualify under this provision.

(c) If they do not qualify for continued assistance, the member(s) that cause the family to be ineligible for continued assistance may move, the family may choose prorated assistance, or NMHC may offer temporary deferral of termination.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a).

§ 100-90-1120 Family Separations (24 CFR § 982.315)

If a family separates during the time it is receiving Section 8 assistance, NMHC will determine who retains the assistance as follows:

(a) First consideration will be given to a family member forced to leave the household as a result of actual or threatened violence by a spouse or other family member.

(b) Second consideration will be given to an adult family member with custody of minor children.

(c) Third consideration will be given to an adult family member with custody of ill, elderly, or disabled members.

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(d) If none of the above applies, the adult member initially designated as head of household will retain the Section 8 assistance.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1125 Family Absences from the Assisted Unit (24 CFR § 982.312)

(a) **Absences for More Than Thirty Days.** An assisted family that finds it necessary to be absent from the unit for a period more than 30 consecutive days is required to notify the landlord and NMHC of their absence, and the date by which they expect to return. If the unit will be occupied during the family's absence by a caretaker not ordinarily a part of the household, the tenant must secure the landlord's permission for the arrangement, and must notify NMHC. If NMHC finds the assisted unit unoccupied, or occupied by someone other than the designated head of household or other adult member of the family, it will assume that the family has vacated the unit and will terminate the HAP contract.

(b) **Termination of HAP Contract for Absences More Than 180 Days.** Under no circumstances may the family be absent from the assisted unit for more than 180 consecutive days. If the family's absence exceeds 180 days, NMHC will terminate the HAP contract.

(c) **Issuance of New Vouchers if Notice Given.** If family has given the notice required under subsection (a), above, the family will be eligible to receive a new voucher within 180 days of the termination of the HAP contract if assistance is available under the voucher program. For purposes of determining eligibility, these families will be considered as having been continuously assisted under the 1937 Act, and the very low-income limitation will not apply.

(d) **Must Reapply if No Notice Given.** If the required notice has not been given, or if more than 180 days have elapsed since the termination of the HAP contract, the family will not be eligible to resume assistance, and must reapply when applications are being accepted.

(e) **Loss of Head of Household/Sole Adult Family Member.** If, at any time, the head of household or sole adult member dies or leaves the unit for any reason (institutionalized, incarceration, forming a new household elsewhere), NMHC will permit the remaining members of the family to continue to participate in the HCV program as long as:

- (1) There is at least one family member who is either an adult or emancipated minor capable of executing a lease;
- (2) The remaining family member(s) report the death or departure of who was listed on the lease for the unit;
- (3) There is still at least one family member who was listed on the lease for the unit.

(f) The Corporate Director or his designee may determine if a family may remain following incarceration of the only adult family member.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The final paragraph was undesignated in the original regulation. The Commission designated it as subsection (f) pursuant to 1 CMC § 3806(a).

Part 1200 - Annual Reexaminations/Certifications

§ 100-90-1201 General (HCV Program Guidebook 7420-10G: Reexaminations)

NMHC is required to reexamine the income and composition of housing choice voucher families at least annually. The annual reexamination determines the continued eligibility of the family and establishes the housing assistance payment (HAP) to be made on behalf of the family. NMHC may require families to report interim changes in family income or family circumstances as well. A family's failure to comply with NMHC's reexamination requirements is grounds for terminating assistance. All reexaminations must be performed within a 12-month period.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1205 Procedures

Families are required to be recertified at least annually for continued eligibility and rent determination.

(a) Recertification Notice to the Family

(1) NMHC shall maintain a recertification tracking system and the household shall be notified by mail of the date and time for their interview at least 90 days in advance of the anniversary date.

(2) All adult household members will be required to attend the recertification interview. If the head of household is unable to attend the interview, the appointment shall be rescheduled.

(b) Reporting Interim Changes. NMHC requires program participants to report all changes in household composition to NMHC between annual recertification. This includes additions due to birth, adoption, and court-awarded custody. The family must obtain NMHC approval prior to all other additions to the household.

(c) Interim Recertification Policy

(1) NMHC will conduct interim recertification when families have an increase (\$200 or more) in income or change in family size.

(2) Families are required to report all increases and decreases in income/assets of all the household members or increases/decreases in family size to NMHC within (10) days of the change. If a family fails to report a change in income/assets, NMHC may conduct an interim recertification upon obtaining evidence of said change in income/assets/family size. If the recertification results in an increase in rent, then said increase shall be charged retroactively to the date of the income/asset/family size change. Failure to report a change in income/asset/family size is grounds for termination of assistance.

(d) NMHC Errors. If NMHC makes a calculation error at admission to the program or at an annual reexamination, an interim reexamination will be conducted to correct the error, but the family will not be charged retroactively.

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(e) Duty of Family to Disclose Receipt of Notification From HUD Concerning Family Income

(1) If any member of a family receives notification from HUD as to their income, whether said notice to the amount, source, or other aspect of their income, then the family must notify NMHC of their receipt of the HUD notification within ten days of their receipt of the said notification. Failure by the family to notify NMHC of said notification is grounds for termination of assistance.

(2) Upon NMHC's receipt of the family's HUD notification, NMHC shall conduct an interim recertification of the family.

(f) Notification of Results of Recertification

(1) The HUD form 50058 will be completed and transmitted as required by HUD.

(2) The Notice of Tenant Rent Change is mailed to the owner and the tenant following a recertification even if rent and lease remain the same. Signatures are not required by NMHC. If the family disagrees with the rent adjustment, the family must notify their caseworker to resolve this disagreement.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission designated subsections pursuant to 1 CMC § 3806(a). The Commission struck the figure "10" from subsection (e)(1) pursuant to 1 CMC § 3806(e).

§ 100-90-1210 Adverse Actions for Missed Reexaminations

Failure to Respond to Notification to Recertify. If the family does not appear for the recertification interview, and has not rescheduled or made prior arrangements with NMHC, NMHC shall reschedule a second appointment. If the family fails to appear for the second appointment and has not rescheduled or made prior arrangements, the Section 8 specialist shall schedule a mandatory meeting. Failure to attend this mandatory meeting will result in the termination of assistance. NMHC has determined that since this is a mandatory family responsibility, families may not request for an informal hearing.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The text of this section was designated as a subsection in the original regulation. As it was the only subsection in the section, the Commission eliminated the subsection pursuant to 1 CMC § 3806(a).

Part 1300 - Informal Reviews and Hearings

§ 100-90-1301 General

All grievances shall be heard in accordance with NMHC's Grievance Procedures. A copy of NMHC's Grievance Procedures shall be given to each family during their initial briefing. See Appendix A for Informal Review Procedures and Appendix B for Informal Hearing Procedures.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: This paragraph was undesignated in the original regulation. The Commission designated it as section 100-90-1301 pursuant to 1 CMC § 3806(a).

§ 100-90-1305 Informal Review

(a) Informal Reviews for Applicants

(1) NMHC will provide a copy of the informal review procedures in the family briefing packet. See Appendix A: Informal Review Procedures.

(2) Informal reviews are provided for applicants who are denied assistance before the effective date of the HAP contract. The exception is that when an applicant is denied assistance based on citizenship or eligible immigrant status, the applicant is entitled to an informal review.

(3) When NMHC determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice will contain the reason(s) they are ineligible, the procedure for requesting a review if the applicant does not agree with the decision and the time limit for requesting a review.

(b) When Informal Review Required. NMHC shall provide applicants with the opportunity for an informal review of decisions denying:

(1) Listing on NMHC's waiting list;

(2) Issuance of a voucher; or

(3) Participation in the program.

(c) Informal Review Not Required. Informal reviews are not required for established policies and procedures and NMHC determinations such as:

(1) Discretionary administrative determinations by NMHC;

(2) General policy issues or class grievances;

(3) A determination of the family unit size under NMHC's occupancy standards;

(4) Refusal to extend or suspend a voucher;

(5) Disapproval of lease;

(6) Determination that a unit is not in compliance with HQS; or

(7) Determination that a unit is not in accordance with HQS due to family size or composition.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission inserted a period at the end of subsection (a)(1) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the words "reviews" in subsections (a)(2) and (c), "informal" in subsection (b), "review" in subsection (b), and "voucher" in subsection (b)(2) pursuant to 1 CMC § 3806(f).

§ 100-90-1310 Informal Hearing

(a) NMHC will provide a copy of the informal hearing procedures in the family briefing packet. See Appendix B: Informal Hearing Procedures.

(b) When NMHC makes a decision regarding the eligibility and/or the amount of assistance, applicants and participants must be notified in writing. NMHC will give the family prompt notice of such determinations, which shall include:

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- (1) The proposed action or decision of NMHC;
 - (2) The date of the proposed action or decision will take place;
 - (3) The explanation of the basis for NMHC's decision;
 - (4) The procedures for requesting a formal hearing if the family disputes the action or decision;
 - (5) The time limit for requesting the formal hearing; or
 - (6) To whom the formal hearing request should be addressed.
- (c) When Informal Hearing Required. NMHC must provide participants with the opportunity for an informal hearing for decisions related to any of the following:
- (1) Determination of the family's annual or adjusted income and the computation of the housing assistance payment;
 - (2) Determination to terminate assistance for any reason;
 - (3) Determination to pay an owner claim for damages, unpaid rent or vacancy loss for Section 8 multi-family project-based housing; or
 - (4) Termination of the voucher holder in the event of the break-up of the family.
 - (5) NMHC must always provide this opportunity before termination of assistance.
- (d) When an Informal Hearing is Not Required. The NMHC is not required to provide a participant family an opportunity for an informal hearing for any of the following:
- (1) Discretionary administrative determinations by the PHA;
 - (2) General policy issues or class grievances;
 - (3) Establishment of the NMHC schedule of utility allowances for families in the program;
 - (4) An NMHC determination not to approve an extension or suspension of a voucher term;
 - (5) An NMHC determination not to approve a unit or tenancy;
 - (6) An NMHC determination that an assisted unit is not in compliance with HQS. (However, NMHC must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)
 - (7) An NMHC determination that the unit is not in accordance with HQS because of the family size.
 - (8) A determination by NMHC to exercise or not to exercise any right or remedy against the owner under a HAP contract.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words "informal hearing" in subsection (c) pursuant to 1 CMC § 3806(f). The Commission corrected the capitalization of the word "multi-family" in subsection (c)(3) pursuant to 1 CMC § 3806(f).

Part 1400 - The HAP Contract

§ 100-90-1401 General

The HAP contract is a written agreement between NMHC and the owner of a unit occupied by a housing choice voucher program participant. The HAP contract must be in the form prescribed by HUD. Under the HAP contract, NMHC agrees to make housing assistance payments to the

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owner on behalf of the family leasing a specified unit. NMHC uses its payment standard schedule to calculate the monthly HAP payment to the owner.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1405 Owner Approvals

Prior to executing a HAP contract and processing housing assistance payments, NMHC must determine that the owner of the assisted unit is eligible to participate in the housing choice voucher program. The term “owner” may include any other interested party. See § 100-90-835.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

§ 100-90-1410 Landlord Obligations

Owner responsibilities are defined in the HAP contract, lease, and HUD regulations. The owner is responsible for the following:

- (a) 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;
- (b) Complying with equal opportunity requirements;
- (c) Maintaining the unit in accordance with HQS, including performing ordinary and extraordinary maintenance;
- (d) Preparing and furnishing to NMHC information required under the HAP;
- (e) Collecting from the family any security deposit, the family rent to owner, and any charges for unit damage by the family;
- (f) Enforcing tenant obligations under the lease; and
- (g) Paying for utilities and services, unless paid for by the family under the lease.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1415 Actions Taken for HAP Contract Breaches

- (a) Any of the following actions by the owner, principal, or other interested party is a breach of the HAP contract and may be subject to a termination of the said contract:
 - (1) Violation of any obligation under the HAP contract, including the requirement to maintain a unit according to HQS;
 - (2) Violation of any obligation under any other housing choice voucher program or Section 8 project-based HAP contract;

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(3) Fraud, bribery, false statements, or any other corrupt or criminal act in connection with the HAP contract or any federal housing program;

(4) For projects with HUD-insured mortgages or HUD loans, failure to comply with applicable program regulations, the mortgage or mortgage note, or regulatory agreement or fraud, bribery, or any other corrupt or criminal act in connection with the mortgage or loan.

(b) If NMHC determines that a breach or noncompliance of the contract has occurred, it may exercise any of its rights and remedies under the HAP contract. NMHC 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. NMHC may recover any overpayment, suspend housing assistance payments, abate or reduce the housing payment, terminate the payment, or terminate the HAP contract. NMHC may also obtain additional relief by judicial order or action, including specific performance, other injunctive relief, or order for damages.

(c) NMHC shall provide the owner with written notice of any termination or reduction of housing assistance payments or the termination of the HAP contract.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission inserted commas after the words “bribery” in subsection (a)(4) and “payment” in subsection (b) pursuant to 1 CMC § 3806(g).

Part 1500 - Terminating or Denying Assistance

§ 100-90-1501 General

If denial or termination is based upon behavior resulting from disability, NMHC will delay the denial or termination in order to determine if there is an accommodation which would negate the behavior resulting from the disability.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1505 Grounds for Terminating or Denying Assistance

(a) Form of denial of assistance for an applicant or terminating assistance for a participant may include any or all of the following:

- (1) Denial or withdrawing a voucher;
- (2) Refusing to enter into a HAP contract or approve a lease;
- (3) Refusing to process or provide assistance under portability procedures;
- (4) Eviction from housing assisted under the program for serious violation of lease;
- (5) Engaging 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; and
- (6) Violation to any provision covered under 24 CFR Part 982.553(b).

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(b) Mandatory Denial and Termination

NMHC must deny assistance to applicants and terminate assistance for participants:

- (1) If any member of the family refuses to sign and submit HUD or NMHC required consent forms for obtaining information;
- (2) If any member engages in the use, sale, distribution, or manufacturing of crystal methamphetamine;
- (3) If no member of the family is a U.S. citizen or eligible immigrant;
- (4) If the family is under contract and 180 days have elapsed since NMHC's last housing assistance payment was made;
- (5) If any member of the household is a registrant of a state sex offender registration program.

(c) Housing Authority Discretion

- (1) In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, NMHC has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, the length of time since the violation occurred and more recent record of compliance, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure to act.
- (2) NMHC may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. NMHC may permit the other members of the family to continue in the program.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (c) pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the word "state" in subsection (b)(5) pursuant to 1 CMC § 3806(f). The Commission inserted a comma after the word "compliance" in subsection (c)(1) pursuant to 1 CMC § 3806(g).

§ 100-90-1510 Family Obligations under Rental Assistance Programs

For the family to continue in the program:

- (a) The family must supply any information that NMHC or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided under 24 CFR part 812*). "Information" includes any requested certification, release, or other documentation.
- (b) The family must supply any information requested by NMHC or HUD for use in a regular scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.
- (c) The family must disclose and verify Social Security numbers (as provided under 24 CFR part 750*) and must submit consent forms for obtaining information in accordance with 24 CFR part 5, 760*, 813*, and other applicable HUD regulations.

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- (d) All information supplied by the family must be true and complete.
- (e) The family is responsible for an HQS breach caused by the family as described in 982.404(b).
- (f) The family must allow NMHC to inspect the unit at reasonable times and after reasonable notice.
- (g) The family may not commit any serious or repeated violation of the lease.
- (h) The family must notify the owner and, at the same time, notify NMHC before the family moves out of the unit or terminates the lease on notice to the owner.
- (i) The family must promptly give NMHC a copy of any owner eviction notice.
- (j) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- (k) The composition of the assisted family residing in the unit must be approved by NMHC. The family must promptly inform NMHC of the birth, adoption, or court awarded custody of a child. The family must request NMHC approval to add any other family member as an occupant of the unit.
- (l) The family must promptly notify NMHC if any family member no longer resides in the unit.
- (m) If NMHC has given approval, a foster child or a live-in aide may reside in the unit. If the family does not request approval or NMHC approval is denied, the family may not allow a foster child or live-in aide to reside with the assisted family.
- (n) Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to the primary use of the unit as a residence by members of the family and only if the owner agrees.
- (o) The family must not sublease or let the unit.
- (p) The family must not assign the lease or transfer the unit.
- (q) The family must supply any information or certification requested by NMHC to verify that the family is living in the unit, or relating to family absence from the unit, including any NMHC-requested information or certification on the purposes of family absences. The family must cooperate with NMHC for this purpose. The family must promptly notify NMHC of extended absence from the unit.
- (r) The family must not own or have any interest in the unit.

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(s) The members of the family must not commit fraud, bribery, or any other corrupt or criminal activity in or about the unit and/or premises.

(t) The members of the family may not engage in drug-related criminal activity or violent criminal activity.

* So in original. These parts do not exist.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “numbers” in subsection (c) pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words “adoption” in subsection (k) and “bribery” in subsection (s) pursuant to 1 CMC § 3806(g).

§ 100-90-1515 Absence from the Unit (24 CFR 981.312(a), (b)*)

The family may be temporarily absent from the unit for brief periods. For longer absences, the PHA administrative plan establishes the PHA 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 in any circumstance, or for the any reason. At its discretion, the PHA may allow absence for a lesser period in accordance with PHA policy. Housing assistance payments terminate if the family is absent for longer than the maximum period permitted. The term of the HAP contract and assisted lease also terminate. The family must promptly notify and obtain approval from NMHC if any family plans to be temporarily absent from the unit for a period of more than 180 consecutive calendar days.

* So in original. This section does not exist.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1520 Duplication of Assistance

An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, commonwealth, or local housing assistance program

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Part 1600 - Section 8 Management Assessment Program (SEMAP)

§ 100-90-1601 General [Reserved]

[Reserved.]

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1605 Purpose

The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings. SEMAP provides procedures for HUD to identify PHA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. PHAs can use the SEMAP performance analysis to assess and improve their own program operations.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1610 Applicability

This rule applies to PHA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component (PBC) of the certificate program (24 CFR part 983) to the extent that PBC family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under the family self-sufficiency program (FSS) (24 CFR part 984).

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1615 SEMAP Regulations

- (a) § 985.2 Definitions.
- (b) § 985.3 Indicators, HUD verification methods and ratings.
- (c) § 985.101 SEMAP certification.
- (d) § 985.102 SEMAP profile.
- (e) § 985.103 SEMAP score and overall performance rating.
- (f) § 985.104 PHA right of appeal of overall rating.
- (g) § 985.105 HUD SEMAP responsibilities.
- (h) § 985.106 Required actions for SEMAP deficiencies,
- (i) § 985.107 Required actions for PHA with troubled performance rating.
- (j) § 985.108 SEMAP records.
- (k) § 985.109 Default under the Annual Contributions Contract (ACC).

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History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (k) pursuant to 1 CMC § 3806(a).

Part 1700 - Temporary Compliance Assistance Addendum Document

Commission Comment: This part's title contained the footnote "Copyright 2013 Nan McKay and Associates. Unlimited copies may be made for internal use. *Admin Plan 3/1/13*"

§ 100-90-1701 Introduction

- (a) On January 22, 2013 HUD issued Notice PIH 2013-03. Effective until March 31, 2014, the notice acknowledges and addresses the budget and staff constraints that PHAs have to face in recent years. To address these burdens, the notice gives a series of four optional methods to reduce administrative burden, addressed below.
- (b) HUD posted Frequently Asked Questions (FAQs) about the notice on March 1, 2013.
- (c) Before implementing any of the temporary policy options, the PHA must notify HUD by email. The email must state which of the 4 options will be implemented.
- (d) The PHA must revise its administrative plan before any of the temporary policies are implemented. This section, with Board approval, contains the PHA's policies for implementation. The PHA must also evaluate whether adoption of any of the temporary policies would constitute a significant amendment to its annual plan, and must revise the annual plan if necessary.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs in the original regulation were undesignated. The Commission designated the paragraphs as subsections (a) through (d) pursuant to 1 CMC § 3806(a).

§ 100-90-1705 Purpose

HUD PIH Notice 2013-03 establishes temporary guidelines for public housing agencies (PHAs) in fulfilling certain Public Housing (PH) and Housing Choice Voucher (HCV) program requirements during a period of decreased resources available to PHAs. These guidelines are intended to facilitate the ability of PHAs to continue, without interruption and with minimal burden, the delivery of rental assistance to eligible families in their communities. The temporary provisions established by PIH Notice 2013-03 will be available to PHAs until March 31, 2014.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1710 Temporary Provisions

- (a) Option to Use Participant's Actual Past Income in Verifying Income

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(1) HUD requires that the use of actual past income must be based on income received during the most recent 12-month period shown in the EIV system. This same 12-month period must be used to determine annual income from the non-EIV income sources, such as TANF.

(2) The option must be applied to all participant families. However, anticipated future income must be used to determine annual income:

(i) For all applicant families;

(ii) At the family's request; and

(iii) When the family's declared income differs substantially from EIV data.

(3) For past income shown in the family's EIV report, no additional verification is required unless the family requests use of anticipated income, or there is a substantial difference between EIV data and family-declared income.

(b) NMHC Policy

(1) NMHC will implement Option 1 and will comply with all HUD requirements listed above.

(2) Actual past income will be used to determine annual income for participant families. Anticipated future income will be used to determine annual income for applicant families.

(3) NMHC will use anticipated future income to determine annual income at the family's request.

(4) For income sources shown in the EIV system, NMHC will compare the income declared by the family to the most recent 12 months of EIV data. If there is a substantial difference of \$200 per month or more, NMHC will revert to using projected future income and will follow current verification procedures to establish annual income.

(5) If the EIV data does not differ substantially from the family-declared income, no additional verification is required and annual income is based on the EIV data.

(6) For income sources that are not available in EIV, NMHC will request tenant-provided documents generated by a third party as verification of income for the 12-month period. If such documents are not available, NMHC will request the information directly from a third party, using a standardized third-party form.

(c) Self-Certification of Assets of \$5,000 or Less

(1) This option permits the PHA to temporarily accept family self-certification of assets when the total net value of the family's assets does not exceed \$5,000. The option reduces administrative burden by eliminating the time-consuming verification process for assets which have minimal impact on the family's subsidy level.

(2) The family's self-certification on application and reexamination forms may be accepted when all adult family members sign the applicable form.

(2) NMHC must continue to report all assets on Form HUD-50058, including assets of families with net assets which do not exceed \$5,000.

(3) If the family's assets exceed \$5,000 in net value, NMHC must verify the assets according to existing PHA policy.

(d) NMHC Policy

(1) NMHC will implement Option 2, and will comply with all HUD requirements.

(2) For families whose assets do not exceed \$5,000 in net value, NMHC will accept family self-certification of asset value and anticipated income.

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(3) NMHC may require additional verification if necessary to document that assets do not exceed \$5,000 in net value.

(e) Approval of Exception Payment Standard as Reasonable Accommodation. References: Notice PIH 2010-11; Notice PIH 2010-26

(1) The PHA is required to approve an exception payment standard as a reasonable accommodation for a family that includes a person with disabilities, if the exception is necessary to make the program accessible to and usable by persons with disabilities. The exception may be necessary to permit the family to rent a unit with accessible features.

(2) Current rules permit the PHA to approve an exception payment standard up to 110% of the applicable fair market rent (FMR). Field office approval is required for exceptions from 111% to 120% of FMR, and HUD headquarters approval is required for exceptions above 120%. HUD has noted that the requirement for field office approval has resulted in delays which may prevent a family from renting a unit.

(3) This option temporarily eliminates the requirement for field office approval, and permits the PHA to approve exception payment standards of up to 120% of FMR in this situation. Exceptions above 120% of FMR still require approval from HUD headquarters.

(4) Under this option, NMHC must maintain file documentation of rent reasonableness and documentation that the unit has features required to meet the needs of the person with disabilities.

(f) NMHC Policy

(1) NMHC will implement this option and will comply with all HUD requirements.

(2) When a family that includes a person with disabilities requires an exception payment standard as a reasonable accommodation, NMHC will approve or deny for exceptions up to 120% of the applicable FMR.

(3) Requests for exception payment standards over 120% of FMR will be forwarded to HUD headquarters, with supporting documentation as described in Notice PIH 2010-11.

(4) NMHC will maintain file documentation as required by HUD, including documentation of rent reasonableness and documentation of unit features required by the disabled family member.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of each subsection were not designated in the original regulation. The Commission designated them as subsection pursuant to 1 CMC § 3806(a).

Part 1800 - Project-Based Voucher Program

§ 100-90-1801 Introduction

This section describes HUD regulations and NMHC policies related to the project-based voucher (PBV) program in nine subsections:

(a) General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

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- (b) PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors that NMHC 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.
- (c) Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.
- (d) 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.
- (e) 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 NMHC's discretion.
- (f) Selection of PBV Program Participants. This part describes the requirements and policies governing how NMHC and the owner will select a family to receive PBV assistance.
- (g) 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.
- (h) Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.
- (i) Payments to Owner. This part describes the types of payments owners may receive under this program.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

§ 100-90-1805 General Requirements

- (a) Overview [24 CFR 983.5]. The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].
- (b) NMHC Policy

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(1) NMHC will operate a project-based voucher program using up to 20 percent of its budget authority for voucher programs.

(2) 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, NMHC is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, NMHC is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

(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 NMHC 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.

(d) NMHC Policy. Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, NMHC policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

(e) Relocation Requirements [24 CFR 983.7]

(1) 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.

(2) The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. NMHC may not use voucher program funds to cover relocation costs, except that NMHC 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.

(3) 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 NMHC to ensure the owner complies with these requirements.

(f) Equal Opportunity Requirements [24 CFR 983.8]. NMHC 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, NMHC must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

* So in original. 42 U.S.C. §§ 4201-4655 does not refer to the URA.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

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Commission Comment: The paragraphs of each subsection were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The February 2014 Notice of Adoption made amendments to subsection (b)(1).

§ 100-90-1810 PBV Owner Proposals

(a) Overview. NMHC must describe the procedures for owner submission of PBV proposals and for NMHC selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, NMHC must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57].

(b) Owner Proposal Selection Procedures [24 CFR 983.51]. NMHC must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. NMHC must select PBV proposals by either of the following two methods:

(1) NMHC Request for PBV Proposals - NMHC may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the NMHC request. NMHC 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.

(2) NMHC May Select a Proposal That Was 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.

(3) Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)] — NMHC 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 NMHC. 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 NMHC request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

(4) NMHC Request for Proposals for Rehabilitated and Newly Constructed Units

(i) NMHC will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals: The Saipan Tribune and/or Marianas Variety and other local media likely to reach prospective owners.

(ii) In addition, NMHC will post the RFP and proposal submission and rating and ranking procedures on its electronic web site. NMHC 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 NMHC estimates that it will be able to assist under the funding NMHC is making available. Proposals will be due in the NMHC office by close of business 30 calendar days from the date of the last publication.

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- (iii) In order for the proposal to be considered, the owner must submit the proposal to NMHC by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.
- (iv) NMHC will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:
 - (A) Owner experience and capability to build or rehabilitate housing as identified in the RFP;
 - (B) Extent to which the project furthers NMHC's goal of deconcentrating poverty and expanding housing and economic opportunities;
 - (C) If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property;
 - (D) Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, NMHC will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score; and
 - (E) Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program.
- (5) NMHC Requests for Proposals for Existing Housing Units
 - (i) NMHC will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals: The Saipan Tribune, Marianas Variety, and other local media most likely to reach prospective owners.
 - (ii) In addition, NMHC will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site. NMHC 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 NMHC estimates that it will be able to assist under the funding the NMHC is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:
 - (A) Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
 - (B) Extent to which the project furthers the NMHC goal of deconcentrating poverty and expanding housing and economic opportunities;
 - (C) If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
 - (D) Extent to which units are occupied by families that are eligible to participate in the PBV program.
- (6) NMHC Selection of Proposals Subject to a Previous Competition Under a Federal, State, or Local Housing Assistance Program
 - (i) NMHC 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.
 - (ii) NMHC may periodically advertise that it is accepting proposals, in the following newspapers and trade journals: The Saipan Tribune, Marianas Variety, and other local media most likely to reach prospective owners.

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- (iii) In addition to, or in place of advertising, NMHC 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.
- (iv) Proposals will be reviewed on a first-come first-served basis. NMHC will evaluate each proposal on its merits using the following factors:
 - (A) Extent to which the project furthers NMHC's goal of deconcentrating poverty and expanding housing and economic opportunities; and
 - (B) Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.
- (7) NMHC owned Units [24 CFR 983.51(e) and 983.591*]
 - (i) An NMHC 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 NMHC-owned units were appropriately selected based on the selection procedures specified in the NMHC administrative plan. If NMHC selects a proposal for housing that is owned or controlled by NMHC, NMHC must identify the entity that will review the NMHC proposal selection process and perform specific functions with respect to rent determinations and inspections.
 - (ii) In the case of NMHC-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.
 - (iii) 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.
 - (iv) NMHC may submit a proposal for project-based housing that is owned or controlled by NMHC. If the proposal for NMHC-owned housing is selected, NMHC will use an independent contractor to review the NMHC selection and to administer the PBV program. NMHC will obtain HUD approval of an independent contractor prior to selecting the proposal for NMHC-owned housing.
 - (v) NMHC may only compensate the independent entity and appraiser from NMHC ongoing administrative fee income (including amounts credited to the administrative fee reserve). NMHC may not use other program receipts to compensate the independent entity and appraiser for their services. NMHC, the independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.
- (8) NMHC Notice of Owner Selection [24 CFR 983.51(d)] – NMHC 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.
- (9) NMHC Policy
 - (i) Within 10 business days of NMHC making the selection, NMHC will notify the selected owner in writing of the owner's selection for the PBV program. NMHC 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.

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(ii) In addition, NMHC will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals NMHC used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. NMHC will also post the notice of owner selection on its electronic web site.

(iii) NMHC will make available to any interested party its rating and ranking sheets and documents that identify NMHC 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. NMHC will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

(iv) NMHC will make these documents available for review at NMHC during normal business hours.

(c) Housing Type [24 CFR 983.52]

(1) NMHC 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 NMHC selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

(2) NMHC must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The NMHC choice of housing type must be reflected in its solicitation for proposals.

(d) Prohibition of Assistance for Certain Units

(1) Ineligible Housing Types [24 CFR 983.53] - NMHC 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, NMHC may not attach or pay PBV assistance for a unit occupied by an owner and NMHC 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.

(2) Subsidized Housing [24 CFR 983.54] - NMHC may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

(i) A public housing unit;

(ii) A unit subsidized with any other form of Section 8 assistance;

(iii) A unit subsidized with any governmental rent subsidy;

(iv) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(v) A unit subsidized with Section 236 rental assistance payments (except that NMHC may attach assistance to a unit subsidized with Section 236 interest reduction payments);

(vi) A Section 202 project for non-elderly with disabilities;

(vii) Section 811 project based supportive housing for persons with disabilities;

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- (viii) Section 202 supportive housing for the elderly;
 - (ix) A Section 101 rent supplement project;
 - (x) A unit subsidized with any form of tenant-based rental assistance;
 - (xi) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or NMHC in accordance with HUD requirements.
- (e) Subsidy Layering Requirements [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]
- (1) NMHC may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.
 - (2) 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.
 - (3) NMHC must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), NMHC may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.
 - (4) 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.
- (f) Cap on Number of PBV Units in Each Project
- (1) 25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08] - In general, NMHC may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.
 - (2) Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b), FR Notice 11/24/08]
 - (i) Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:
 - (A) The units are in a single-family building (one to four units);
 - (B) The units are excepted units in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as qualifying families).
 - (ii) NMHC must include in the NMHC administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one

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qualifying supportive service. A NMHC may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

(iii) If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the NMHC administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(iv) NMHC must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The NMHC administrative plan must state the form and frequency of such monitoring.

(3) NMHC Policy — NMHC will provide PBV assistance for excepted units. NMHC will not require families living in excepted units to receive supportive services. Therefore, excepted units will be limited to units in single-family buildings and those made available for elderly or disabled families.

(4) Promoting Partially-Assisted Buildings [24 CFR 983.56(c)] — NMHC may establish local requirements designed to promote PBV assistance in partially assisted buildings. A partially assisted building is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3]. NMHC may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. NMHC may also determine not to provide PBV assistance for excepted units, or NMHC may establish a per-building cap of less than 25 percent.

(5) NMHC Policy — NMHC will provide assistance for excepted units. Beyond that, NMHC will not impose any further cap on the number of PBV units assisted per building.

(g) Site Selection Standards

(1) Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards (24 CFR 983.57(b))

(i) NMHC 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 NMHC has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the NMHC administrative plan.

(ii) In addition, prior to selecting a proposal, NMHC must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable civil rights laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

(2) NMHC Policy

(i) It is NMHC's goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities. In complying with this goal NMHC will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

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- (ii) However, NMHC will grant exceptions to the 20 percent standard where NMHC determines that the PBV assistance will complement other local redevelopment activities designed to de-concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:
 - (A) A census tract in which the proposed PBV development will be located in a HOD-designated Enterprise Zone, Economic Community, or Renewal Community;
 - (B) 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;
 - (C) 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;
 - (D) 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;
 - (E) A census tract where there has been an overall decline in the poverty rate within the past five years; or
 - (F) A census tract where there are meaningful opportunities for educational and economic advancement.
- (3) Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)] - NMHC 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:
 - (i) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
 - (ii) Have adequate utilities and streets available to service the site;
 - (iii) Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
 - (iv) 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
 - (v) Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.
- (4) 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:
 - (i) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
 - (ii) The site must have adequate utilities and streets available to service the site;
 - (iii) The site must not be located in an area of minority concentration unless NMHC 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;
 - (iv) 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 nonminority residents in the area;
 - (v) 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;

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- (vi) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
 - (vii) 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
 - (viii) 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.
- (h) Environmental Review [24 CFR 983.58]
- (1) NMHC 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.*). NMHC 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.
 - (2) 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.
 - (3) NMHC may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and NMHC, 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.
 - (4) NMHC must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. NMHC 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.

* So in original. This section does not exist.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission inserted a comma after the word “state” in subsection (b)(6)(i) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the words “federal” in subsection (b)(6)(iii) and “civil rights laws” in subsection (g)(1)(ii) pursuant to 1 CMC § 3806(f). The February 2014 Notice of Adoption made amendments to subsections (b)(3), (b)(6), (b)(7)(i), and (f)(5).

§ 100-90-1815 Dwelling Units

- (a) Overview. This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.
- (b) Housing Quality Standards [24 CFR 983.101]
 - (1) The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared

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housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program

(2) The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

(3) Lead-based Paint [24 CFR 983.101(c)] - The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(c) Housing Accessibility for Persons With Disabilities

(1) 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. NMHC 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.

(2) 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)

(d) Inspecting Units

NMHC must conduct the following inspections:

(1) Pre-selection Inspection [24 CFR 983.103(a)] — NMHC must examine the proposed site before the proposal selection date. If the units to be assisted already exist, NMHC must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, NMHC may not execute the HAP contract until the units fully comply with HQS.

(2) Pre-HAP Contract Inspections [24 CFR 983.103(b)] – NMHC must inspect each contract unit before execution of the HAP contract. NMHC may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

(3) Turnover Inspections [24 CFR 983.103(c)] — Before providing assistance to a new family in a contract unit, NMHC must inspect the unit. NMHC may not provide assistance on behalf of the family until the unit fully complies with HQS.

(4) Annual Inspections [24 CFR 983.103(d)]

(i) At least annually during the term of the HAP contract, NMHC must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

(ii) If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, NMHC must re-inspect 100 percent of the contract units in the building.

(5) Other Inspections [24 CFR 983.103(e)]

(i) NMHC must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. NMHC must take into account complaints and any other information coming to its attention in scheduling inspections.

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(ii) NMHC must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

(iii) In conducting NMHC supervisory quality control HQS inspections, NMHC should include a representative sample of both tenant-based and project-based units.

(6) Inspecting NMHC-owned Units [24 CFR 983.103(f)] — In the case of NMHC-owned units, the inspections must be performed by an independent agency designated by NMHC and approved by HUD. The independent entity must furnish a copy of each inspection report to NMHC and to the HUD field office where the project is located. NMHC 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 NMHC-owner.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The February 2014 Notice of Adoption made amendments to subsection (c)(1) and (d)(6).

§ 100-90-1820 Rehabilitated and Newly Constructed Units

(a) Overview [24 CFR 983.151]

(1) 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.

(2) Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

(b) Agreement to Enter Into HAP Contract

(1) In order to offer PBV assistance in rehabilitated or newly constructed units, NMHC must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

(2) In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and NMHC agrees that upon timely completion of such development in accordance with the terms of the Agreement, NMHC will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

(3) At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program [24 CFR 983.152(c)]:

(i) Site and the location of the contract units;

(ii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iii) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;

(iv) 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;

(v) 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;

(vi) Estimated initial rents to owner for the contract units;

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(vii) 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 NMHC, specifications and plans. For new construction units, the description must include the working drawings and specifications.

(viii) Any additional requirements for quality, architecture, or design over and above HQS.

(ix) Any additional requirements for quality, architecture, or design over and above HQS.

(c) Execution of Agreement

(1) Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08] - The Agreement must be executed promptly after NMHC notice of proposal selection to the selected owner. Generally, NMHC may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, NMHC may not enter into the Agreement until the environmental review is completed and NMHC has received environmental approval. However, NMHC does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

(2) NMHC Policy — NMHC 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 are started.

(d) Conduct of Development Work

(1) Labor Standards [24 CFR 983.154(b)]

(i) If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HOD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

(ii) 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. NMHC must monitor compliance with labor standards.

(2) Equal Opportunity [24 CFR 983.154(c)] — The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

(3) Owner Disclosure [24 CFR 983.154(d) and (e)]

(i) 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.

(ii) The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

(e) Completion of Housing

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

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- (1) Evidence of Completion [24 CFR 983.155(b)]
 - (i) At a minimum, the owner must submit the following evidence of completion to NMHC in the form and manner required by NMHC:
 - (A) Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
 - (B) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.
 - (ii) At the NMHC's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.
- (2) NMHC Policy — NMHC 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. NMHC will specify any additional documentation requirements in the Agreement to enter into HAP contract.
- (3) NMHC Acceptance of Completed Units [24 CFR 983.156]
 - (i) Upon notice from the owner that the housing is completed, NMHC must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. NMHC must also determine if the owner has submitted all required evidence of completion.
 - (ii) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.
 - (iii) If NMHC determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, NMHC must submit the HAP contract for execution by the owner and must then execute the HAP contract.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the acronym "HAP" in subsection (b) pursuant to 1 CMC § 3806(f). The February 2014 Notice of Adoption reorganized this section to create subsection (c).

§ 100-90-1825 Housing Assistance Payments Contract (HAP)

- (a) Overview. NMHC must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].
- (b) HAP Contract Requirements.
 - (1) The HAP contract must specify the following information [24 CFR 983.203, FR Notice 11/24/08]:
 - (i) The total number of contract units by number of bedrooms;
 - (ii) 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;

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- (iii) 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;
 - (iv) Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
 - (v) 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;
 - (vi) 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;
 - (vii) The HAP contract term;
 - (viii) The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families; and
 - (ix) The initial rent to owner for the first 12 months of the HAP contract term.
- (2) Execution of the HAP Contract [24 CFR 983.204] — NMHC may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS). 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.
- (3) NMHC Policy
- (i) For existing housing, the HAP contract will be executed within 10 business days of NMHC determining that all units pass HQS.
 - (ii) For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of NMHC determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.
- (4) Term of HAP Contract [FR Notice 11/24/08] — NMHC may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.
- (5) NMHC Policy — The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.
- (6) Contract Extensions — At any time before expiration of the HAP contract, NMHC may extend the term of the contract for an additional term of up to 15 years if NMHC determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.
- (7) NMHC Policy — When determining whether or not to extend an expiring PBV contract, NMHC will consider several factors including, but not limited to:
- (i) The cost of extending the contract and the amount of available budget authority;
 - (ii) The condition of the contract units;
 - (iii) The owner's record of compliance with obligations under the HAP contract and lease(s);
 - (iv) Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
 - (v) Whether the funding could be used more appropriately for tenant-based assistance.
- (8) Termination by NMHC [24 CFR 983.205(c)]

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(i) The HAP contract must provide that the term of NMHC's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by NMHC 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.

(ii) 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, NMHC may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

(9) Termination by Owner [24 CFR 983.205(d), FR Notice 11/24/08]

(i) 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 NMHC. In this case, families living in the contract units must be offered tenant-based assistance.

(ii) At their discretion NMHC may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

(10) Remedies for HQS Violations [24 CFR 983.207(b)] — NMHC may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If NMHC determines that a contract does not comply with HQS, NMHC 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.

(c) Execution/Termination of HAP Contract

(1) NMHC Policy — NMHC will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.*

(d) Amendments to the HAP Contract

(1) Substitution of Contract Units [24 CFR 983.206(a)] — At NMHC's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, NMHC must inspect the proposed unit and determine the reasonable rent for the unit.

(2) Addition of Contract Units [24 CFR 983.206(b)] — At NMHC's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of the NMHC's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

(3) NMHC Policy — NMHC will consider adding contract units to the HAP contract when the NMHC determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

(i) The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

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- (ii) Voucher holders are having difficulty finding units that meet program requirements.

- (e) HAP Contract Year, Anniversary and Expiration Dates [24 CFR 983.206(c) and 983.302(e)]
 - (1) 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.
 - (2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.
 - (3) 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.

- (f) Owner Responsibilities Under the HAP [24 CFR 983.209]. When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:
 - (1) All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
 - (2) The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
 - (3) Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by NMHC, and the lease is in accordance with the HAP contract and HUD requirements;
 - (4) 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;
 - (5) 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;
 - (6) The amount of the HAP the owner is receiving is correct under the HAP contract;
 - (7) The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
 - (8) Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
 - (9) The family does not own or have any interest in the contract unit.

- (g) Additional HAP Requirements
 - (1) Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]
 - (i) The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with NMHC 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.
 - (ii) NMHC 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

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into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

(2) NMHC Policy — NMHC will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. NMHC 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.

(3) Vacancy Payments [24 CFR 983.352(b)] — At the discretion of NMHC, the HAP contract may provide for vacancy payments to the owner for a NMHC-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 NMHC 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).

(4) NMHC Policy — NMHC will decide on a case-by-case basis if NMHC 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.

* This chapter, as enacted, contained no Section 8-II.G.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission inserted commas after the words "equipment" in subsection (e)(2) and "replacement" in subsection (f)(1)(i) pursuant to 1 CMC § 3806(g). The February 2014 Notice of Adoption reorganized this section to create subsection (c).

§ 100-90-1830 Selection of PBV Program Participants

(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.

(b) Eligibility for PBV Assistance [24 CFR 983.251(a) and (b)]

(1) NMHC may select families for the PBV program from those who are participants in NMHC'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 re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

(2) 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 NMHC, 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 NMHC's collection and use of family

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information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

(3) In-Place Families [24 CFR 983.251(b)]

(i) An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by NMHC 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 NMHC’s waiting list. Once the family’s continued eligibility is determined (NMHC 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 NMHC 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.

(ii) This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

(c) Organization of the Waiting List [24 CFR 983.251(c)]

(1) NMHC may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. NMHC may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by NMHC. If NMHC chooses to offer a separate waiting list for PBV assistance, NMHC must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

(2) If NMHC decides to establish a separate PBV waiting list, NMHC may use a single waiting list for NMHC’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.

(3) NMHC will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

(d) Selection From the Waiting List [24 CFR 983.251(c)]

(1) Applicants who will occupy units with PBV assistance must be selected from NMHC’s waiting list. NMHC may establish selection criteria or preferences for occupancy of particular PBV units. NMHC may place families referred by the PBV owner on its PBV waiting list.

(2) Income Targeting [24 CFR 983.251(c)(6)] — At least 75 percent of the families admitted to NMHC’s tenant-based and project-based voucher programs during NMHC’s 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.

(3) 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, NMHC must first refer families who require such features to the owner.

(4) Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

(i) NMHC 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. NMHC must provide an absolute selection preference for eligible in place families as described in subsection (b) above.

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- (ii) Although NMHC is prohibited from granting preferences to persons with a specific disability, NMHC may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):
 - (A) With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
 - (B) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
 - (C) For whom such services cannot be provided in a non-segregated setting.
 - (iii) 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.
 - (iv) If NMHC has projects with more than 25 percent of the units receiving project-based assistance because those projects include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), NMHC must give preference to such families when referring families to these units [24 CFR 983.261(b)].
 - (5) NMHC Policy — NMHC will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units). NMHC will not offer any additional preferences for the PBV program or for particular PBV projects or units.
- (e) Offer of PBV Assistance
- (1) Refusal of Offer [24 CFR 983.251(e)(3)] — NMHC is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:
 - (i) Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
 - (ii) Deny any admission preference for which the applicant qualifies;
 - (iii) Change the applicant’s place on the waiting list based on preference, date, and time of application, or other factors affecting selection under NMHC’s selection policy;
 - (iv) Remove the applicant from the tenant-based voucher waiting list.
 - (2) 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.
 - (3) Acceptance of Offer [24 CFR 983.252] — NMHC responsibilities are as follows:
 - (i) Family Briefing — When a family accepts an offer for PBV assistance, NMHC 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, NMHC must provide a briefing packet that explains how NMHC determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.
 - (ii) Persons with Disabilities — If an applicant family’s head or spouse is disabled, NMHC 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. In addition, NMHC must have a mechanism for referring a family that includes a member with mobility impairment to an appropriate accessible PBV unit.

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(iii) Persons with Limited English Proficiency — NMHC 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.

(f) Owner Selection of Tenants. The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(b)].

(1) 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 NMHC from NMHC's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on NMHC's subsidy standards.

(2) Filling Vacancies [24 CFR 983.254(a)] — The owner must promptly notify NMHC of any vacancy or expected vacancy in a contract unit. After receiving such notice, NMHC must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. NMHC and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

(3) NMHC Policy

(i) The owner must notify NMHC in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

(ii) NMHC will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

(4) 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, NMHC 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.

(5) NMHC Policy — If any contract units have been vacant for 120 days, NMHC 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. NMHC 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 NMHC's notice.

(g) Tenant Screening [24 CFR 983.255]

(1) NMHC Responsibility — The following are NMHC's responsibilities with respect to tenant screening:

(i) NMHC is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, NMHC may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

(ii) NMHC will not conduct screening to determine a PBV applicant family's suitability for tenancy.

(iii) NMHC must provide the owner with an applicant family's current and prior address (as shown in NMHC records) and the name and address (if known by NMHC) of the family's current landlord and any prior landlords.

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- (iv) In addition, NMHC may offer the owner other information NMHC may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.
- (v) NMHC must provide applicant families a description of the NMHC policy on providing information to owners, and NMHC must give the same types of information to all owners.
- (vi) NMHC will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. NMHC will not provide any additional information to the owner, such as tenancy history, criminal history, etc.
- (2) 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:
 - (i) Payment of rent and utility bills;
 - (ii) Caring for a unit and premises;
 - (iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;
 - (iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
 - (v) Compliance with other essential conditions of tenancy.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission corrected the capitalization of the words "Social Security" in subsection (b)(2) pursuant to 1 CMC § 3806(f). The February 2014 Notice of Adoption made amendments to subsections (c)(1), (d)(1), and (d)(4)(iv).

§ 100-90-1835 Occupancy

- (a) Overview. After an applicant has been selected from the waiting list, determined eligible by NMHC, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.
- (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.
 - (1) Form of Lease-[24 CFR 983.256(b)]
 - (i) 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.
 - (ii) 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 an NMHC model lease.
 - (iii) NMHC may review the owner's lease form to determine if the lease complies with state and local law. If NMHC determines that the lease does not comply with state or local law, NMHC may decline to approve the tenancy.

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- (2) NMHC Policy — NMHC will not review the owner’s lease for compliance with state or local law.
- (3) Lease Requirements [24 CFR 983.256(c)] — The lease for a PBV unit must specify all of the following information:
- (i) The names of the owner and the tenant;
 - (ii) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
 - (iii) The term of the lease (initial term and any provision for renewal);
 - (iv) The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
 - (v) A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
 - (vi) The amount of any charges for food, furniture, or supportive services.
- (4) Tenancy Addendum [24 CFR 983.256(d)] — The tenancy addendum in the lease must state:
- (i) The program tenancy requirements;
 - (ii) The composition of the household as approved by NMHC (the names of family members and any NMHC-approved live-in aide);
 - (iii) 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.
- (5) Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)] — The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, NMHC must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.
- (6) Changes in the Lease [24 CFR 983.256(e)]
- (i) If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give NMHC a copy of all changes.
 - (ii) The owner must notify NMHC 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 NMHC and in accordance with the terms of the lease relating to its amendment. The NMHC must re-determine 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.
 - (iii) The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.
- (7) 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 24 CFR 982.310). These are:
- (i) 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.
 - (ii) Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08] — If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g.,

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Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

(8) Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)] — The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by NMHC 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.

(9) Security Deposits [24 CFR 983.258] — The owner may collect a security deposit from the tenant. NMHC may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(10) NMHC Policy

(i) NMHC will allow the owner to collect a security deposit amount the owner determines is appropriate.

(ii) 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.

(iii) 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.

(iv) 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. NMHC has no liability or responsibility for payment of any amount owed by the family to the owner.

(c) Relocating a Family

(1) Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259] — If NMHC determines that a family is occupying a wrong size unit, based on NMHC'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, NMHC must promptly notify the family and the owner of this determination, and NMHC must offer the family the opportunity to receive continued housing assistance in another unit.

(2) NMHC Policy

(i) NMHC 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 NMHC's determination. NMHC will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

(A) PBV assistance in the same building or project;

(B) PBV assistance in another project; and

(C) Tenant-based voucher assistance.

(ii) If NMHC offers the family a tenant-based voucher, NMHC must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by NMHC).

(iii) If NMHC 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 NMHC, or both, NMHC must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by NMHC.

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- (iv) When NMHC 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, NMHC will terminate the housing assistance payments at the expiration of this 30-day period.
- (v) NMHC 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.
- (3) Family Right to Move [24 CFR 983.260]
 - (i) 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 NMHC. If the family wishes to move with continued tenant-based assistance, the family must contact NMHC to request the rental assistance prior to providing notice to terminate the lease.
 - (ii) If the family terminates the lease in accordance with these requirements, NMHC 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, NMHC must give the family priority to receive the next available opportunity for continued tenant-based assistance.
 - (iii) If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.
- (d) Exceptions to the Occupancy Cap [24 CFR 983.261, FR Notice 11/24/08]
 - (1) NMHC may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:
 - (i) In a single-family building;
 - (ii) Specifically made available for elderly or disabled families; or
 - (iii) Specifically made available for families receiving supportive services as defined by NMHC. At least one member must be receiving at least one qualifying supportive service.
 - (2) 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 as defined by NMHC 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.
 - (3) A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by NMHC, and NMHC must cease paying housing assistance payments on behalf of the non-qualifying family.
 - (4) 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 NMHC.
 - (5) NMHC will provide PBV assistance for excepted units.

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History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission inserted a comma after the word “owner” in subsection (a) pursuant to 1 CMC § 3806(g). The February 2014 Notice of Adoption made amendments to subsection (b)(6)(ii).

§ 100-90-1840 Determining Rent to Owner

(a) Overview

(1) 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.

(2) During the term of the HAP contract, the rent to owner is re-determined at the owner’s request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

(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:

(1) An amount determined by NMHC, 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;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(4) For certain tax credit units [24 CFR 983.301(c), FR Notice 11/24/08], the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

(i) The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;

(ii) The contract unit is not located in a qualified census tract;

(iii) There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds an NMHC-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

(v) For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

(A) The tax credit rent minus any utility allowance;

(B) The reasonable rent; or

(C) The rent requested by the owner.

(vi) However, NMHC IS permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

(5) Definitions:

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- (i) 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.
- (ii) Tax credit rent is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).
- (6) When determining the initial rent to owner, NMHC must use the most recently published FMR [24 CFR 983.301(f)] in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, NMHC must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, NMHC 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, NMHC 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.
- (7) NMHC must re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR [24 CFR 983.302, FR Notice 11/24/08].
- (i) Rent Increase — If an owner wishes to request an increase in the rent to owner from NMHC, it must be requested at the annual anniversary of the HAP contract (see § 100-90-1825(c)). The request must be in writing and in the form and manner required by NMHC. NMHC 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).
- (ii) NMHC Policy — An owner's request for a rent increase must be submitted to NMHC 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing. NMHC may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.
- (iii) 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. However, NMHC may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.
- (iv) Notice of Rent Change — The rent to owner is re-determined by written notice by NMHC to the owner specifying the amount of the re-determined rent. NMHC 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.

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- (v) NMHC will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.
- (8) NMHC-Owned Units [24 CFR 983.301(g)] — For NMHC-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. NMHC must use the rent to owner established by the independent entity.
- (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 NMHC.
- (1) When Rent Reasonable Determinations are Required — NMHC must re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:
- (i) There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- (ii) NMHC approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- (iii) The HAP contract is amended to substitute a different contract unit in the same building; or
- (iv) There is any other change that may substantially affect the reasonable rent.
- (2) 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, NMHC 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.
- (3) 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 NMHC. The comparability analysis may be performed by NMHC 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.
- (4) NMHC-Owned Units – For NMHC-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 NMHC-owned units to NMHC and to the HUD field office where the project is located.
- (5) 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, NMHC may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.
- (d) Effect of Other Subsidy and Rent Control. In addition to the rent limits discussed in subsection (b) above, other restrictions may limit the amount of rent to owner in a PBV unit. In

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addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see § 100-90-1810(d)).

(1) Other Subsidy [24 CFR 983.304].

(i) At its discretion, NMHC may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing. For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

(ii) 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:

(A) An insured or non-insured Section 236 project;

(B) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(C) A Section 221(d)(3) below market interest rate (BMIR) project;

(D) A Section 515 project of the Rural Housing Service;

(E) Any other type of federally subsidized project specified by HUD;

(F) Combining Subsidy — Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

(2) 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.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The February 2014 Notice of Adoption made amendments to subsections (b)(7)(i), (b)(7)(iv), and (d).

§ 100-90-1845 Payments to Owner

(a) Housing Assistance Payments [24 CFR 983.351]

(1) During the term of the HAP contract, NMHC must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and NMHC agree on a later date.

(2) Except for discretionary vacancy payments, NMHC 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).

(3) The amount of the housing assistance payment by NMHC is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(4) 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.

(b) Vacancy Payments [24 CFR 983.352]

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- (1) 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 NMHC determines that the vacancy is the owner's fault.
 - (2) NMHC Policy – If NMHC determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, NMHC will notify the landlord of the amount of housing assistance payment that the owner must repay. NMHC will require the owner to repay the amount owed in accordance with the policies in § 100-90-1825(g), above.
 - (3) Vacancy Payments
 - (i) At the discretion of NMHC, the HAP contract may provide for vacancy payments to the owner. NMHC may only make vacancy payments if:
 - (A) The owner certifies that the vacancy is not the fault of the owner and the unit was vacant during the period for which payment is claimed;
 - (B) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
 - (C) The owner provides any additional information required and requested by NMHC to verify that the owner is entitled to the vacancy payment.
 - (ii) The owner must submit a request for vacancy payments in the form and manner required by NMHC and must provide any information or substantiation required by NMHC to determine the amount of any vacancy payment.
 - (4) NMHC 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 NMHC of the vacancy in accordance with the policy in the section 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 NMHC may require the owner to provide documentation to support the request. If the owner does not provide the information requested by NMHC within 10 business days of NMHC's request, no vacancy payments will be made.
- (c) Tenant Rent to Owner [24 CFR 983.353]
- (1) The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by NMHC in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the NMHC notice to the family and owner.
 - (2) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by NMHC 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 NMHC. The owner must immediately return any excess payment to the tenant.
 - (i) Tenant and NMHC Responsibilities
 - (A) 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 NMHC.
 - (B) Likewise, NMHC is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. NMHC is not responsible for paying tenant rent, or

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any other claim by the owner, including damage to the unit. NMHC 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.

(ii) Utility Reimbursements

(A) If the amount of the utility allowance exceeds the total tenant payment, NMHC 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.

(B) NMHC may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If NMHC chooses to pay the utility supplier directly, NMHC must notify the family of the amount paid to the utility supplier.

(C) NMHC Policy — NMHC will make utility reimbursements to the family.

(d) Other Fees and Charges [24 CFR 983.354]

(1) Meals and Supportive Services

(i) 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.

(ii) 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.

(2) 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.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The paragraphs of the subsections in this section were not designated in the original regulation. The Commission designated them as subsections pursuant to 1 CMC § 3806(a). The Commission substituted section numbers pursuant to 1 CMC § 3806(d). The February 2014 Notice of Adoption made amendments to subsections (b)(2) and (c)(2)(ii)(B).

**Appendix A
Informal Review Procedures**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements (Federal Register Volume 60, No. 127, p 36490).

DECISIONS SUBJECT TO INFORMAL REVIEW

NMHC shall 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 NMHC 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;
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence or stalking.

Informal reviews are not required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by NMHC;
- General policy issues or class grievances;
- A determination of the family unit size under the NMHC subsidy standards;
- NMHC determination not to grant approval of tenancy;
- NMHC determination that the unit is not in compliance with the HQS;
- NMHC determination that the unit is not in accordance with the HQS due to family size or composition.

NMHC Policy

NMHC shall only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on NMHC’s 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)]

NMHC must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for NMHC’s 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

NMHC Policy

A request for an informal review must be made in writing and delivered to NMHC either in person or by certified mail, by the close of the business day, no later than 10 business days from the date of NMHC's denial of assistance.

INFORMAL REVIEW PROCEDURES [24 CFR 982.554(b)]

NMHC Policy

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 NMHC.

The person conducting the review will make a recommendation to NMHC, but NMHC is responsible for making the final decision as to whether assistance should be granted or denied.

INFORMAL REVIEW DECISION [24 CFR 982.554(b)]

NMHC must notify the applicant of NMHC's final decision, including a brief statement of the reasons for the final decision.

NMHC Policy

In rendering a decision, NMHC will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the Notice;
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned;
- The validity of the evidence. NMHC 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, NMHC will uphold the decision to deny assistance;
- If the facts prove the grounds for denial, and the denial is discretionary, NMHC will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

NMHC will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

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If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The February 2014 Notice of Adoption made amendments to this section.

**Appendix B
Informal Hearing Procedures**

INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

NMHC must offer an informal hearing for certain NMHC determinations relating to individual circumstances of a participant family.

NMHC 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 includes but not limited to the following:

- Refusing to enter into a HAP contract or approve lease;
- Terminating housing assistance payments under an outstanding HAP contract; and
- Refusing to process or provide assistance under portability procedures.

DECISIONS SUBJECT TO INFORMAL HEARING

Circumstances for which NMHC must give a participant 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 NMHC's utility allowance schedule;
- A determination of the family unit size under NMHC's subsidy standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act; and
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under NMHC policy and HUD rules (six months).

INFORMAL HEARING PROCEDURES

Notice to the Family [24 CFR 982.555(c)]

When NMHC makes a decision that is subject to informal hearing procedures, it 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 termination of the family's assistance, or the denial of a family's request for an exception to NMHC'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.

NMHC Policy

In cases where NMHC makes a decision for which an informal hearing must be offered, the notice to family shall include all of the following:

- The proposed action of NMHC;
- A brief statement of the reasons for the decision including regulatory reference;
- The date the proposed action will take place;
- A statement of the family's right to an explanation of the basis for NMHC's decision;
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision;
- The deadline for the family to request the informal hearing; and
- A copy of NMHC's hearing procedures.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, NMHC must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

NMHC Policy

A request for an informal hearing must be made in writing and delivered to NMHC either in person or by certified mailed, by the close of the business day, no later than 10 business days from the date of NMHC's decision to terminate assistance.

NMHC must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

A family may request to reschedule a hearing for good cause or if it is needed as a reasonable accommodation for a person with disabilities.

Pre-Hearing Right to Discovery [24 CFR 982.555]

Participants and NMHC are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any NMHC documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense.

If NMHC does not make the document available for examination on request of the family, NMHC may not rely on the document at the hearing.

NMHC hearing procedures may provide that NMHC must be given the opportunity to examine at NMHC offices before the hearing, any family documents that are directly relevant to the hearing. NMHC must be allowed to copy any such document at NMHC's expense. If the family does not make the document available for examination on request of NMHC, the family may not rely on the document at the hearing.

NMHC Policy

For the purpose of informal hearings, “documents” include records and regulations.

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 NMHC documents no later than 12:30 p.m. on the business day prior to the scheduled hearing date.

NMHC must be given an opportunity to examine at NMHC offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, NMHC will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:30 p.m. on the business day prior to the scheduled hearing date.

Participant’s Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by NMHC, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

NMHC Policy

NMHC has designated the following to serve as hearing officers:

- ***NMHC Management Staff***
- ***Legal Consultant/Staff or Contract Staff***

Attendance at the Informal Hearing

NMHC Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- NMHC representative(s) and any witnesses for NMHC;
- The participant and any witnesses for the participant;
- The participant’s counsel or other representative; and
- Any other person approved by NMHC as a reasonable accommodation for a person with a disability.

Conduct at Hearings

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The person who conducts the hearing may regulate the conduct of the hearing in accordance with NMHC hearing procedures [24 CFR 982.555(4)(ii)].

NMHC Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and business-like 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)]

NMHC and the family must be given the opportunity to present evidence and question any witness. 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.

NMHC 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 NMHC. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combination thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Although evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either NMHC or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decisions [24 CFR 982.555(e)(6)]

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The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing decision must be furnished promptly to the family.

NMHC Policy

In rendering a decision, the hearing officer will consider the following matters:

NMHC Notice to Family: The hearing officer will determine if the reasons for NMHC's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if NMHC and the family given the opportunity to examine any relevant documents in accordance with NMHC policy.

NMHC Evidence to Support NMHC 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 NMHC'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 NMHC policies. If the grounds for termination are not specified in the regulations or in compliance with NMHC policies, then the decision of NMHC will be overturned.

The hearing officer will issue a written decision to the family and NMHC 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 NMHC representative; and
Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on preponderance of evidence. Preponderance of 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

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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 evidence. The conclusion will result in a determination of whether these facts uphold NMHC's decision.

Order: The hearing report will include a statement whether NMHC's decision is upheld or overturned. If it is overturned, the hearing officer will instruct NMHC to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct NMHC to restore the participant's program status.

The results of the hearing on the appeal do not in any way preclude the Participant from proceeding with any other legal remedies that may be open to him/her.

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The February 2014 Notice of Adoption made amendments to this section.

**Appendix C
CNMI Building Safety Code Rules and Regulations**

[Reserved.]

History: Adopted 36 Com. Reg. 34701 (Feb. 28, 2014); Proposed 35 Com. Reg. 34400 (Oct. 28, 2013).

Commission Comment: The October 2013 Proposed Regulations contained a title page for Appendix C: CNMI Building Safety Code Rules and Regulations, but did not contain regulations. See 35 Com. Reg. 34536.