

2009 NURSING HOME TRANSITION AND DIVERSION PROGRAM GUIDE

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INTRODUCTION:

The New York State Housing Trust Fund Corporation is charged with creating decent affordable housing for persons of low-income. Within the overall mission of the Corporation, this Program Guide serves as the HTFC operational handbook for implementing the Nursing Home Transition and Diversion subsidy.

In the Nursing Home Transition and Diversion waiver program, The NYS Department of Health (DOH) has contracted with nine (9) not-for-profit agencies to serve as Regional Resource Development Centers (RRDCs) across the State to assist with administration of the waiver. In the Nursing Home Transition and Diversion (NHTD) Housing Subsidy Program, HTFC pays rental subsidies so eligible participants¹ can avoid or transition from unwanted/unnecessary nursing home placement via use of home and community based services and affordable, decent, safe and sanitary housing.

In order to effectively and efficiently implement the NHTD Housing Subsidy Program over its entire statewide jurisdiction, HTFC has contracted with Local Authorities (LAs) to undertake necessary field activities. Day-to-day responsibility for local administration of the NHTD Housing Subsidy Program in the field is assumed by each LA in its designated local area of operation. The division of responsibilities shall be detailed in a contract between HTFC and each of its LAs.

Participants select and rent units that meet HUD housing quality standards (HQS). If the LA approves a participant's unit and tenancy, the LA enters into a contract to make rental subsidy payments to the owner on behalf of the participant. The LA contract with the owner only covers a single unit and a specific assisted participant. If the participant moves out of the leased unit, the contract with the owner terminates. The participant may move to another unit with continued assistance so long as the participant is complying with program requirements.

Administration of the NHTD Housing Subsidy Program and the functions and responsibilities of the HTFC staff will be in compliance with the HTFC Personnel Policy and as well as all Federal, State and local Fair Housing Laws and Regulations.

All participants in the NHTD Housing Subsidy Program shall be NHTD waiver participants, who are seniors and/or individuals with disabilities. It is anticipated that LAs will exercise provisions of reasonable accommodation as may be considered prudent and appropriate.

In the subsidy program, the subsidy is based on a local “payment standard” that reflects the cost to lease a unit in the local housing market. The subsidy is the difference between the payment standard and 30 percent of adjusted monthly income.

¹ Whenever the term ‘individual,’ ‘applicant’ or ‘participant’ is used in this NHTD Housing Subsidy Program Manual, it also includes reference to the presence of the NHTD waiver participant’s family should family members reside with him/her. *Definitions found elsewhere:* The terms regarding Income, subsidy calculation, applicable housing types and household members, et al. with regard to this program shall be uniform with those set forth by HUD in CFR 982 subpart A&F, and shall be uniform with Section 8/HCV Program.

Section 1.0 RECORDS AND COMPLIANCE

1. The LA must maintain complete and accurate accounts and other records for the program in accordance with HTFC requirements, in a manner that permits a speedy and effective audit. The records must be in the form required by HTFC, including requirements governing computerized or electronic forms of record-keeping.
2. The LA must make every effort possible to ensure the confidentiality of records. However, DOH, HTFC, Division of Housing and Community Renewal (DHCR), and the NY State Comptroller shall have free access to all records applicable to the administration of the Nursing Home Transition and Diversion Housing Subsidy Program
3. During the term of the assistance, under Nursing Home Transition and Diversion Housing Subsidy Program and for at least three years thereafter, the LA must keep:
 - A copy of the executed lease;
 - The Assistance Payments Contract (APC)-see also "*Owner Rents and Assistance Payments*"
 - A copy of all inspections conducted
 - Documents related to Annual and interim examinations.
 - Identifying documents and items related to Initial Interview Process

1.01 Administration

All program activities will be administered uniformly, fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, nationality, religion, familial status, disability, sex or other legally protected groups.

To the maximum extent possible, the LA will involve other community and governmental entities in the promotion and enforcement of this policy. This policy will be posted on the LA's bulletin board and copies made readily available to applicants and participants upon request.

Section 2.0 ADMISSION POLICIES

It is the policy of HTFC to ensure that all participants who express an interest in housing assistance are given equal opportunity to apply and are treated in a fair and consistent manner. This section describes the policies and procedures for admitting participants to the Nursing Home Transition and Diversion Subsidy Program for assistance.

2.01 Eligibility of participants for Admission

1. Participants must be referred for the NHTD housing subsidy assistance by their service Coordinator and approved by an authorized DOH RRDS.
2. Participants must be in receipt of services under the Nursing Home Transition and Diversion Waiver

2.02 Grounds for Denial

The LA may deny assistance to applicants who:

1. Do not meet any of the eligibility criteria;
2. Do not supply information or documentation required;
3. Fail to complete any aspect of the lease-up process;
4. Have a history of criminal activity by any household member involving crimes of physical violence against persons or property, or any other criminal activity, including drug-related criminal activity, that would adversely affect the health, safety or well being of other participants or staff, or cause damage to the property;
 - Participants whose date of conviction is greater than three (3) years previous *may* be admitted to the program.
5. Currently owe rent, other amounts owed to LA or other obligations to any housing authority in connection with the public housing or Section 8 programs;
6. Have committed fraud, bribery, or any other corruption in connection with any Federal housing assistance program, including the intentional misrepresentation of information related to their housing application or benefits derived therefrom;
7. Have a family member who was evicted from federally assisted housing within the last five years;
8. Have a family member who is illegally using a controlled substance or abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. The LA may waive this requirement if:
 - A. the person demonstrates to the LA's satisfaction that the person is no longer engaging in drug-related criminal activity or abuse of alcohol;
 - B. the person has successfully completed a supervised drug or alcohol rehabilitation program;
 - C. the person has otherwise been rehabilitated successfully; or
 - D. the person is participating in a supervised drug or alcohol rehabilitation program.
10. Have engaged in or threatened abusive or violent behavior towards any LA staff member;
11. Have a family household member who has been terminated under the Housing Choice Voucher Program during the last three years; or has been terminated from the NHTD subsidy in another jurisdiction.
12. Have a family member who has been convicted of manufacturing or producing methamphetamine;

13. Have a family member with a lifetime registration under a State sex offender registration program, or has been convicted of a violent sex crime.

- *Participants who meet this criterion should be brought to the attention of statewide NHTD staff.*

These circumstances governing denial of assistance to applicants shall also be applicable to any and all instances wherein a participant family wishes to admit an additional family member who meets any of the above conditions.

If assistance is to be denied, the denial will be based upon either of the following:

- Preponderance of Evidence - 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.
- Credible Evidence - defined as evidence provided by police, government and court systems such as drug raids, drugs found in the dwelling unit, evidence which is tied to the activity, warrants issued, arrests made, decisions issued, other legitimate documentation etc.

2.03 Notification of Negative Actions

Should the LA deny an applicant for assistance under the Nursing Home Transition and Diversion Subsidy Program they will notify RRDS in writing within ten (10) business days as to the reason for the denial.

2.04 First-Year Limitation on Where Family Can Lease a Unit

Applicants must utilize the assistance for 12 consecutive months in the unit where their subsidy is being activated.

2.05 Initial Participant Interview

At the point of admission, all adult household applicants will be required to participate in an Initial Participant Interview. The Initial Participant Interview affords the LA, Service Coordinator & RRDS an opportunity to discuss with the participant the family's circumstances in greater detail, to clarify information which has been provided by the family, and to ensure that all required information is accurate and complete.

At the interview the participant will be provided with information about assistance procedures, as well as advice regarding other housing services or programs which may be available. The applicant will be required to furnish complete and accurate information requested by the interviewer including certification regarding restrictions on admission. When all documentation has been submitted, the LA representative will complete the calculation based on written information provided by the applicant and RRDS.

At the conclusion of the Initial Participant Interview, the participant will sign and certify that all information is complete and accurate.

As part of the Initial Participant Interview, the LA must provide the participant family with the following:

- Family and owner responsibilities;

- *Information packet*, a packet that includes information on the following subjects:
 - How the LA determines the amount of the Assistance Payment for a family, including:
 - How the LA determines the payment standard for a family; and
 - How the LA determines the rental payment for a family.
 - When the LA will consider granting exceptions to the standards;
 - Information on federal, State and local equal opportunity laws, and a copy of the housing discrimination complaint form;
 - Confirmation of their eligibility for Section 8/ HCV assistance, how to apply to the local Section 8/ HCV waiting list and, if open, assistance completing pre-application procedures
 - LA informal hearing procedures. This information must describe when the LA is required to give a participant family the opportunity for an informal hearing, and how to request a hearing.

2.06 Requirement to Attend Interview

All adult family members are required to attend the interview and sign the household certification. Exceptions may be made for students attending school out of state or for members for whom attendance would be a hardship.

If the head of household cannot attend the interview, the spouse may attend to complete the certification and certify for the family. A designee will be allowed to participate in the interview process, but only with permission of the participant. If a participant misses a scheduled appointment, does not contact the LA to reschedule, cannot be contacted by the LA to reschedule or misses two scheduled meetings, the LA will contact the RRDS to enforce program procedures.

The LA may conduct the Initial Participant Interview via office visit, or as a home visit, or via another accessible location, upon request. The LA may **not** conduct the Initial Participant Interview via mail.

At the time of the interview, the head of household and spouse will be required to sign the certification form containing the family composition, income, asset and allowance information for the family. As required by the LA, other adult members may also be asked to sign these forms.

All adult members must sign:

- Release of Information
- any supplemental forms and/or documents required by the LA;
- Applicants may also be required to sign specific verification forms for information. Failure to do so when required will be cause for denial of the application for NHTD assistance.
- If the LA determines during or after the interview that additional information is needed directly from the applicant, the LA will specify in writing or other accessible format what information is required and what kind of documentation must be provided by the applicant to verify it. The family will be given ten (10) business days to supply requested information. If the information is not supplied in this time period, or other time period afforded due to reasonable accommodation, the LA may deny assistance.

Section 3.0 TENANCY AND ASSISTANCE PAYMENTS

3.01 Lease and tenancy.

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.

The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

If the owner uses a standard lease form for rental to unassisted tenants in the locality, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a LA model lease.

The LA may review the lease to determine if the lease complies with State and local law. The LA may decline to approve the tenancy if the LA determines that the lease does not comply with NYS or local tenant law.

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, in accordance with the requirements of this section and the owner must immediately give the LA a copy of such changes.

Assistance shall not be continued unless the LA has approved and has executed a new APC with the owner, including:

- If there are any changes in lease provisions governing the term of the lease; or
- If the family moves to a new unit, even if the unit is in the same building or complex.

LA approval and execution of a new APC are not required for changes other than as specified in this section.

The owner must notify the LA of any changes in the amount of the rent to owner at least sixty (60) days before any such changes go into effect.

3.02 Term of assisted tenancy.

The Initial term of lease must be for at least one year. During the initial term of the lease, the owner may not raise the rent to owner. A shorter initial lease term may be approved if the LA determines that:

- Such shorter term would improve housing opportunities for the tenant; and/or
- Such shorter term is the prevailing local market practice.

3.03 Owner termination of tenancy.

During the term of the lease, the owner may terminate the tenancy per NY state and local law regarding lease terminations and eviction:

The owner must give the LA a copy of any eviction notice to the tenant. The owner may only evict the tenant from the unit by instituting a court action.

3.04 Assistance Payment contract [APC]

The term of the APC begins on the first day of the lease term and ends on the last day of the lease term.

The APC terminates if any of the following occurs:

- The lease is terminated by the owner or the tenant;
- The LA terminates the APC ; or
- The LA terminates assistance for the family.

3.05 When assistance is paid

Assistance Payments are paid to the owner in accordance with the terms of the APC. Assistance Payments may only be paid to the owner during the lease term, and while the family is residing in the unit.

If the owner has commenced the process to evict the tenant, and the family continues to reside in the unit, the LA must continue to make Assistance Payments to the owner in accordance with the APC until the owner has obtained a court judgment or other process allowing the owner to evict the tenant. The LA may continue such payments until the family moves from or is evicted from the unit.

Assistance Payments terminate if:

- The lease is terminated;
- The APC terminates; or
- The LA terminates assistance for the family.
- The participant is discontinued from the NHTD waiver program.
- If the family moves out of the unit. No assistance is paid for the month following the family move-out

The owner may keep the Assistance Payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last Assistance Payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

3.06 Security deposits

The owner may collect a security deposit from the tenant in accordance with NYS and local tenant law as well as standard private market practice. If the individual is transitioning from a nursing home, the security deposit may be paid by the NHTD waiver service Community Transitional Service (CTS).

If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant.

Section 4.0 OCCUPANCY POLICIES

4.01 Definition of Groups of Persons That May Qualify as a Family

1. A **participant with or without children**. Such a family is defined as a group of people related by blood, marriage, adoption or affinity that lives together in a stable family relationship. A 'family' may also be defined as a single person.

- Children temporarily absent from the home due to placement in foster care are considered family members.
- A first unborn child and children in the process of being adopted are considered participant members for purposes of determining family unit size.
- In cases where a parent has joint custody allowing the child/children to reside with the parent at least 50% of the time, the LA must consider such child/children in determining the (family unit) size for the participant. The 50% custody arrangement must be documented.
- If both parents are participants in LA or PHA housing subsidy programs, only one of the parents is allowed to claim the child/children as a dependent.

2. An individual receiving Nursing Home Transition and Diversion waiver services may be considered a **remaining member of a tenant family** and may qualify as a family.

4.02 Family Guests

Participants in the NHTD program are permitted to have a guest or guests in the household. If the guest resides in the unit for more than 50% of the time or 5 nights per week, the guest(s) will be considered unauthorized household member(s). When this occurs, the LA must enforce HTFC policies addressing this matter.

Section 5.0 ASSISTANCE TO FAMILIES CLAIMING DISCRIMINATION

It is the policy of to ensure that participating or prospective owners fully comply with all Federal, State, and local nondiscrimination laws; the Americans with Disabilities Act; and the U. S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

No person shall, on the grounds of race, color, sex, religion, national or ethnic origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the Statewide Nursing Home Transition and Diversion Housing subsidy Program. LAs will provide Federal/State/local information to applicants for and participants in the Statewide Nursing Home Transition and Diversion Housing subsidy Program. Regarding discrimination and any recourse available to them if they believe they may be victims of discrimination. Such information will be made available with the application. All applicable Fair Housing Information and Discrimination Complaint Forms will be made available at the offices of each LA. In addition, all appropriate written information and advertisements will contain the appropriate Equal Opportunity language and logo.

The LA will assist any participant who believes he/she has suffered illegal discrimination by providing him/her with copies of the housing discrimination form. The LA will also assist the participant in completing the form, if requested, and will provide him/her with the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

The LA will advise families regarding how to file a complaint if they believe they have been discriminated against by an owner. The LA will advise the participant to make a Fair Housing complaint. The LA may also report the owner to HUD (Fair Housing/Equal Opportunity) or the local Fair Housing organization.

**Section 6.0 PROVIDING PARTICIPANT INFORMATION TO
PROSPECTIVE OWNERS**

Upon request by the owner, the LA will provide the owner with the participant's current and prior address as shown in the LA's records as well as the name and address (if known by the LA) of the landlord at the participant's current and prior addresses. LAs must adopt standard policies regarding how such information is to be disclosed.

Section 7.0 DISAPPROVAL OF OWNER

The LA will deny participation by an owner at the direction of HTFC. The LA may also deny an owner's participation for any of the following reasons:

1. The owner has violated any obligations under a Nursing Home Transition and Diversion Housing subsidy Program, or Section 8 Housing Assistance Payments Contract;
2. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal or state housing program;
3. The owner has engaged in drug-related criminal activity or any violent criminal activity;
4. The owner has a history or practice of non-compliance with HQS for units leased under any housing program;
5. The owner has a history or practice of renting units that fail State or local codes;
6. The owner has not paid State or local real estate taxes, fines, or assessments;
7. The owner refuses (or has a history of refusing) to evict families for drug-related or violent criminal activity, or for activity that threatens the health, safety or right of peaceful enjoyment of the premises by tenants, LA employees or owner employees, or neighboring residents;
8. There exist other conflicts of interest under Federal, State, or local law.

Section 8.0 SUBSIDY STANDARDS

8.01 Determination of Family Unit Size

The LA will issue a voucher for a specific bedroom size-bedroom size is a factor in determining the family's level of assistance. The following guidelines will be used to determine each family's unit size without overcrowding or over-housing:

Zero Bedroom:

- 1 adult

One Bedroom:

- 1 adult
- 2 adults (spouse or cohabitants)

Two Bedroom:

- 1 adult, 1 child
- 1 adult, 2 children (same sex)
- 1 adult, 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 1 additional adult
- 2 adults (spouses or cohabitants), 1 child
- 2 adults (spouses or cohabitants), 2 children (same sex)
- 2 adults, 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 2 adults (spouses or cohabitants)

Three Bedroom:

- 1 adult, 2 children (opposite sex)
- 3 adults (not spouses or cohabitants)
- 1 adult, 2 children (same sex), 1 child (either sex)
- 2 adults (not spouses or cohabitants), 2 children (same sex)
- 2 adults (not spouses or cohabitants), 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 2 adults (not spouses or cohabitants)
- 2 adults (spouses or cohabitants), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex) 2 children (same sex)
- 2 adults (spouses or cohabitants), 4 children (all same sex)
- 2 adults (spouses or cohabitants), 4 children (opposite sex, **all** 5 years or younger)

Four Bedroom:

- 4 adults (not spouses or cohabitants)
- 2 adults (not spouses or cohabitants), 2 children (opposite sex)
- 1 adult, 2 children (same sex), 2 children (opposite sex)
- 3 adults (not spouses or cohabitants), 2 children (same sex)
- 1 adult, 2 children (same sex), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (opposite sex, 5 years or younger)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 1 adult
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 2 children (same sex)
- 2 adults (spouses or cohabitants), 2 children (opposite sex, 5 years or younger), 2 children (opposite sex, 5 years or younger), 2 children (opposite sex, 5 years or younger)
- 2 adults (spouses or cohabitants), 6 children (opposite sex, **all** 5 years or younger)

The LA does not determine who shares a bedroom/sleeping room. The LA's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines. For subsidy standards, an adult is a person 18 years old or older.

All standards in this section relate to the number of bedrooms authorized under the subsidy, not the family's actual living arrangements.

The unit size remains the same as long as the family composition remains the same, regardless of the actual unit size rented.

Generally, the LA assigns one bedroom to two people within the following guidelines:

- Persons of different generations [i.e. 18+ years different in age or parent under the age of 18], persons of the opposite sex (other than sleep companions), and unrelated adults should be allocated a separate bedroom.
- Separate bedrooms should be allocated for persons of the opposite sex (other than adults who have a spousal relationship and children under five years old).
- Foster children will be included in determining unit size only if they will be in the unit for more than one month.
- Live-in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family.
- Space may be provided for a child who is away at school but who lives with the family during school recesses. Space will not be provided for a family member, other than a spouse, who will be absent most of the time, such as a member who is away in the military.

These standards are based on the assumption that each bedroom will accommodate no more than two persons. In determining bedroom size, the LA will include the presence of the first child to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, and children who are temporarily away at school or temporarily in foster-care.

The LA may grant exceptions to normal occupancy standards as a reasonable accommodation.

The family unit size will be determined by the LA in accordance with the above guidelines and will determine the maximum rent subsidy for the family; however, the family may select a unit that may be larger or smaller than the family unit size. If the family selects a smaller unit, the payment standard for the smaller size will be used to calculate the subsidy. If the family selects a larger size, the payment standard for the family unit size will determine the maximum subsidy.

8.02 LIVE-IN AIDE

The LA **must** approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is elderly or a person with disabilities.

At any time, the LA may refuse to approve a particular person as a live-in aide, or may withdraw such approval, if:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the LA in connection with Section 8 or public housing assistance under the 1937 Act.

- Adult Protective Services deems such person unsuitable to reside with the participant family.

8.03 Exceptions to Subsidy Standards

The LA may grant exceptions from the subsidy standards as a reasonable accommodation.

For example: Circumstances may dictate a larger size than subsidy standards permit when a bedroom cannot be shared due to a certified medical or health reason. Such certification may be documented by the Service coordinator, RRDS or other qualified party, or due to the need for a live-in aide.

8.04 Changes for Participants

The members of the family residing in the unit must be approved by the LA. The family must obtain approval from the LA for any additional family member before the new member occupies the unit, except for additions by birth, adoption, or court-awarded custody, in which case the family must inform the LA within 30 days of occurrence. The above-referenced guidelines will apply.

8.05 Underhoused and Overhoused Families

If a unit does not meet Housing Quality Standards (HQS) space standards due to an increase in family size (unit too small), the LA will issue a written recommendation to the Service coordinator (copied to the RRDS) and the family that the family should locate a new unit of the appropriate size.

The LA will also notify the family and Service coordinator (copied to the RRDS) of the circumstances under which an exception will be granted, such as:

- if a family is underhoused in an accessible unit;
- if a family requires the additional bedroom as certified by RRDS/Service Coordinator, including additional space to accommodate a disabled child.

8.06 Ineligible Housing

The following types of housing are not assisted under the HTFC Statewide NHTD program

- nursing homes, board and care homes, or facilities providing continual psychiatric, medical or nursing services;
- college or other school dormitories;
- units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- a unit occupied by its owner (this restriction does not apply to cooperatives or to assistance on behalf of a manufactured home owner leasing a manufactured home space);
or
- a unit receiving any duplicative Federal, State, or local housing subsidy (this does not prohibit renting a unit that has a reduced rent because of a tax credit).

A family may not receive the benefit of tenant-based assistance while receiving the benefit of any other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Any other duplicative federal, State, or local housing subsidy. For this purpose, “housing subsidy” does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Section 9.0 FAMILY ABSENCE FROM THE DWELLING UNIT

Any information or certification requested by the LA to verify that the participant family is living in the unit or, if the participant is absent from the unit, the participant family must provide any LA requested information or certification on the purposes of participant absences must be supplied by either the Service Coordinator &/or the participant family.

The participant family must cooperate with the LA for this purpose. The Service Coordinator must promptly notify the LA of the participant's absence from the unit.

Absence means that no member of the family has resided in the unit for 30 or more days. The participant &/or Service Coordinator must request permission in writing from the LA for absences that will exceed 30 days.

The LA will make a determination in writing within (5) five business days of the request. An authorized absence may not exceed 180 consecutive days. Any participant absent for more than 30 days without authorization will be terminated from the program.

Authorized absences may include, but are not limited to:

- prolonged hospitalization;
- absences beyond the control of the family (e.g., death in the family, other family member illness); or
- Other absences that are deemed necessary by the LA and/or RRDS.

Individuals may be readmitted to the program if their assistance has been terminated due to authorized absences. However they must undertake Initial assistance activation including RRDS certification, submission of RFTA, Initial Participant Interview and HQS inspection.

Section 10.0 MOVES WITH CONTINUED ASSISTANCE

A participant family may move to a new unit if the assisted lease for the old unit has terminated. This includes a termination because:

- The LA has terminated the APC for the owner's breach; or
- The lease has terminated by mutual agreement of the owner and the tenant.
- The owner has given the tenant 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 tenant.
- The tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach or otherwise).

If the participant family terminates the lease on notice to the owner, the family must give the LA a copy of the notice at the same time.

If the participant family wants to move to a new unit, the participant family must notify the LA and the owner before moving from the old unit. If the participant family wants to move to a new unit that is located outside the initial LA jurisdiction, the notice to the LA must include such information.

The LA may deny permission to move in accordance with grounds for denial or termination of assistance.

10.01 Portability:

Participants wishing to move to another LAs jurisdiction must:

- Notify the Service Coordinator & LA of their desire to move outside their current jurisdiction
- Follow standard lease termination procedures.
- Participant will then work with the Service Coordinator to complete the Initial Interview process and activate assistance with the new LA.

Section 11.0 CONTINUED ASSISTANCE IF A FAMILY BREAKS UP

In those instances where a family assisted under the NHTD program becomes divided into two otherwise eligible families due to divorce, legal separation or the division of the family; the new families will both be eligible to receive NHTD subsidy assistance. The family member(s) leaving the assisted unit will be required to submit a RFTA for the new unit and allow the unit to undergo a HQS inspection.

Household members not receiving NHTD waiver services will not be eligible for continued assistance

11.01 Remaining Member of Tenant Family

To be considered the remaining member of the tenant family, the person must have been previously approved by the LA to be living in the unit and be in receipt of NHTD waiver services.

A live-in attendant, by definition, is not a member of the family and will not be considered a remaining member of the family.

Section 12.0 TERMINATION OF ASSISTANCE PROCEDURES

12.01 Consideration of Circumstances

In deciding whether to terminate assistance because of action or inaction by members of the family, the LA may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure. The LA is encouraged to enlist the assistance of the Service Coordinator and/or RRDS as may be appropriate.

The LA 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 to act will not reside in the unit. The LA may permit the otherwise eligible members of a participant family to continue receiving assistance.

12.02 Reasons for Termination of Assistance:

The LA may deny assistance for an applicant or terminate assistance for a participant under the program because of the family's action or failure to act. The LA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

1. Termination of Medicaid Benefits
2. Termination of NHTD waiver services
3. If the family violates any obligations under the program
4. Failure to complete any aspect of the re-examination process;
5. Commission of crimes of physical violence against persons or property, or any other criminal activity, including drug-related criminal activity, violent sex crimes or crimes requiring lifetime registration as a sex-offender or any crimes that adversely affects the health, safety or well being of other residents or staff.
6. Activities that cause damage to the property in excess of normal wear and tear;
7. Failure to pay rent or utilities the participant family is responsible for;
8. Fraud, bribery, or any other corruption in connection with any housing subsidy assistance program, including the intentional misrepresentation of information related to their housing application or benefits derived therefrom;
9. Eviction from subsidized residence;
10. Illegal use by any family member of a controlled substance or abuse of alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or in the immediate vicinity of the premises. Further, the LA may terminate assistance for illegal use of controlled substance or alcohol if the LA finds that a current household member was convicted or incarcerated for any alcohol-related or drug-related criminal activity that took place on or near the premises.

The LA may waive this requirement if:

- A. The household members determined to have engaged in the proscribed activities will not reside in the unit. If the violating member is a minor, the LA may consider individual circumstances with the advice of Juvenile Court officials.

- B. The circumstances leading to the violation no longer exist because the person who engaged in prohibited drug-related or alcohol-related activity is no longer in the household due to death or incarceration.
- C. The person demonstrates to the LA's satisfaction that the person is no longer engaging in drug-related criminal activity or abuse of alcohol;
- D. The person has successfully completed a supervised drug or alcohol rehabilitation program;
- E. The person has otherwise been rehabilitated successfully; or the person is participating in a supervised drug or alcohol rehabilitation program.

If the LA seeks to deny or terminate assistance because of illegal use, or possession for personal use, of a controlled substance, such use or possession must have occurred within one year before the date that the LA provides notice to the family of the LA determination to terminate assistance.

The LA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The LA may permit the other members of a participant family to continue receiving assistance.

11. If the participant family currently owes rent or other amounts to the LA or to a PHA in connection with Section 8, NHTD assistance or public housing assistance.

12. Engages in or threatened abusive or violent behavior towards any LA , waiver service providers or NHTD staff member;

- If the LA seeks to terminate assistance, a copy of the notification of violation sent to the family will be forwarded to the RRDS and Service Coordinator. The RRDS and/or Service Coordinator will then take all necessary measures to mitigate the circumstances up to and including loss of benefit notifications to participant and LA. Should the situation not be rectified within 60 days of LA notification to the participant et al., the LA will take steps to move forward with termination proceedings.
- The Service coordinator will notify the LA of any termination of Medicaid, NHTD or NHTD housing subsidy assistance no less than 30 days prior to termination of such benefits.

12.03 When a Hearing is Required

LA hearing procedures will be provided to participant families in an accessible format at the Initial Participant Interview. The LA will give a participant family an opportunity for an informal hearing to consider whether the following LA decisions relating to the individual circumstances of a participant family are in accordance with the law, program guidelines and LA policies:

1. Determination of the family's annual or adjusted income, and the use of such income to compute the Assistance Payment;
2. Determination of the appropriate utility allowance (if any) for tenant-paid utilities from the LA utility allowance schedule;
3. Determination of the family unit size under the LA subsidy standards;
4. Determination to terminate assistance for a participant family because of the family's action or failure to act; or

5. Determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the LA policy and HTFC rules.

In cases described in items 4 and 5 above, the LA will provide the opportunity for an informal hearing before the LA terminates Assistance Payments for the family under an outstanding APC.

In such cases the LA will give the participant and Service Coordinator/RRDS notification in writing or other documented accessible format the reasons for the decision and state that, if the family does not agree with the decision, the family may request an informal hearing on the decision within ten (10) business days of the notification. The participant should be given the opportunity to submit a written request to reschedule an informal hearing. The participant will be given only one opportunity to reschedule an informal hearing.

12.04 When a Hearing is not required

The LA will **not** provide a participant family an opportunity for an informal hearing for any of the following reasons:

1. Discretionary administrative determinations by the LA;
2. General policy issues or class grievances;
3. Establishment of the LA schedule of utility allowances;
4. When subsidy is terminated due to loss of Medicaid benefits or waiver services. Such cases shall be referred to the RRDS for resolution.
5. LA determination not to approve a unit or lease;
 - (a) In such cases, the LA will notify the participant that the participant may ask for an explanation of the basis of the LA's determination, and that, if the participant does not agree with the determination, the participant family may request an informal hearing on the decision.
6. LA determination that an assisted unit is not in compliance with HQS. (However, the LA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family);
7. LA determination that the unit is not in accordance with HQS because of the family size; or
8. A determination by the LA to exercise or not exercise any right or remedy against the owner under an APC.

12.05 Hearing Procedures

The LA and participants will adhere to the following policies and procedures:

I. Discovery

- a. The participant family will be given the opportunity to examine before the hearing any LA/RRDC documents that are directly relevant to the hearing. The participant family will be allowed to copy any such document at their own expense. If the LA does not make the document(s) available for examination on request of the participant family the LA may not rely on the document at the hearing.

- b. The LA will be given the opportunity to examine, at the LA's offices before the hearing, any documents that are directly relevant to the hearing. The LA will be allowed to copy any such document at the LA's expense. If the participant family does not make the document(s) available for examination on request of the LA, they may not rely on the document(s) at the hearing.

II. Representation of the Family

At the family's own expense, a lawyer or other representative may represent the family.

III. Hearing Officer

The hearing will be conducted by any qualified person or persons designated by the LA, other than a person who made or approved the decision under review or a subordinate of this person; The person who conducts the hearing will regulate the conduct of the hearing in accordance with hearing procedures.

IV. Evidence

Hearing procedures will be provided to families in writing at the Initial Participant Interview. The LA and the family must have the opportunity to present evidence and to question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Evidentiary standards deemed sufficient to terminate assistance:

- Preponderance of Evidence - 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.
- Credible Evidence - defined as evidence provided by police, government and court systems such as drug raids, drugs found in the dwelling unit, evidence which is tied to the activity, warrants issued, arrests made, decisions issued, other legitimate documentation etc.

The Informal Hearing must be conducted within 60 days from the date of the notice.

V. Issuance of Decision

The person who conducts the hearing must issue a written decision within 14 calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

12.06 Effect of the Decision

The LA is not bound by a hearing decision:

- concerning a matter for which the LA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing; or
- Contrary to Program Guidelines or Federal, State or local law.
- If the LA determines that it is not bound by a hearing decision, the LA will notify the participant within 14 calendar days of the determination and of the reasons for the determination.

12.07 Mitigating Circumstances for Participants

When the terminating assistance, examples of mitigating circumstances are:

- a person with a cognitive disorder may not have understood the requirement to report changes.
- a person may not understand the need to make regular repayments on a promissory note; or
- minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

Section 13.0 COMPLAINTS

The LA will investigate and respond to complaints by participant families, owners, employees, and the general public. All complaints will be documented. The LA may require that complaints other than HQS violations be put in writing.

Anonymous complaints are investigated when the person making the complaint indicates **in writing** the details of the specific allegations.

Categories of Complaints

Complaints from families: If a participant family disagrees with an action or inaction by a representative of the Service coordinator, RRDC, LA or owner, complaints will be referred to the RRDC or LA representative as appropriate (unless that is the same person who the complaint was lodged against). If a complaint is not resolved, the family may be referred to NHTD Subsidy Staff for resolution. The LA will inform HTFC (preferably via e-mail transmission) prior to referring applicants or participants to HTFC. Complaints referred to RRDC by LA, should be copied to NHTD Subsidy Staff.

Complaints from owners: If an owner disagrees with an action or inaction of the LA, RRDC or a family, complaints from owners will be referred to the LA office or RRDC.

Complaints from the General Public: Complaints or referrals from persons in the community in regard to the LA, RRDC, a family or an owner will first be referred to the LA or RRDC. If a complaint is not resolved, it may be referred to the LA's HTFC or RRDC's DOH NHTD waiver management staff for investigation and ultimate resolution.

Section 14.0 PAYMENT STANDARDS

14.01 Setting the Payment Standard

For each local program in HTFC's Statewide Program, payment standards are established within a "basic range" (90 percent and 110 percent of the applicable HUD published Fair Market Rent (FMR). Specific payment standards for all bedroom sizes in each LA jurisdiction are established per the unique market forces at play in each local program area.

Payments standards for each jurisdiction shall be identical to those established for the Section 8 program administered in that area.

14.02 Reasonable Accommodation

LAs are authorized to grant exception payment standards where a higher standard is necessary to provide reasonable accommodation for a family member with disabilities. For more on Reasonable Accommodation see Section 23.0.

Section 15.0 OWNER RENTS AND ASSISTANCE PAYMENTS CONTRACT

15.01 Rent to Owner

The allowable rent to owner is limited primarily by the payment standard. Under the NHTD program tenants may not lease units whose housing cost is greater than the local payment standard. However DCHR local administrators are authorized to grant exception payment standards to households for whom rent has been raised following 12 months of tenancy and for whom moving would cause an undue burden to their health and welfare, as may be certified by the RRDS or other qualified party, or whose utility cost is excessive due to operation of medical equipment. Such cost must be demonstrated through 90 consecutive days of utility bills for the assisted unit. Requests for exception to the payment standard must be submitted to HTFC for approval.

15.02 Assistance Payments Contract [APC]

The APC must be in the form required by HTFC. The term of the APC is the same as the term of the lease. The amount of the monthly Assistance Payments by the LA to the owner is determined by the LA in accordance with Program regulations. The amount of the Assistance Payment is subject to change during the APC term.

The monthly Assistance Payment by the LA is credited toward the monthly rent to owner under the family's lease. The total of rent paid by the tenant plus the LA Assistance Payment to the owner may not be more than the rent to owner. The owner must immediately return any excess payment to the LA. The part of the rent to owner which is paid by the tenant may not be more than:

- The rent to owner; minus the LA Assistance Payment to the owner.
- The owner may not demand or accept any rent payment from the tenant in excess of this maximum, and must immediately return any excess rent payment to the tenant.
- The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of rent.
- The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.
- The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

The LA must pay the Assistance Payment promptly when due to the owner in accordance with the APC.

The family is not responsible for payment of the portion of rent to owner covered by the Assistance Payment under the APC between the owner and the LA.

15.03 Owner Responsibilities

The owner is responsible for performing all of the owner's obligations under the APC and the lease, and in accordance with State and Local Law.

15.04 Owner Breach of Contract

Any of the following actions by the owner (including a principal or other interested party) is a breach of the APC by the owner:

- Failure to maintain the unit in compliance with HQS.
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- If the owner has engaged in drug related criminal activity.
- If the owner has committed any violent criminal activity.

The LA rights and remedies against the owner under the APC include recovery of overpayments, abatement or other reduction of Assistance Payments, termination of Assistance Payments, and termination of the APC.

15.05 Termination of APC: Insufficient Funding

The LA may terminate the APC, in accordance with HTFC directives, when funding under the NHTD program is insufficient to support continued assistance for families in the program.

15.06 Automatic termination of APC

The APC terminates automatically 180 calendar days after the last Assistance Payment to the owner.

Section 16.0 HOUSING TYPES

The NHTD Housing Subsidy Program will only approve one of the following housing types:

- Single family dwellings;
- Apartments;
- Manufactured housing; and
- Manufactured home space rentals.
- Shared Housing [no more than 4 unrelated individuals residing together]; and
- Single room occupancy housing.

Section 17.0 HOW TO CALCULATE THE ASSISTANCE PAYMENT

A payment standard is used to calculate the monthly Assistance Payment for a family. The “payment standard” is the maximum monthly subsidy payment.

The LA shall pay a monthly Assistance Payment on behalf of the family in accordance with standard Section 8 calculations and HUD CFR §982.505.

In Calculating the APC & gross rent, The LA shall utilize a utility schedule uniform with that available to participant in the Local HCV/Section 8 program. Activities in compliance with reasonable accommodation should be made available as may be necessitated by tenants’ circumstance, and may be considered grounds to request an exception to the local payment standard.

17.01 Negotiating rent to owner.

The owner and the family negotiate the rent to owner. Upon request, the LA must help the family negotiate the rent to owner.

Section 18.0 OBLIGATIONS OF THE PARTICIPANT

1. The family must supply any information that the LA, HTFC or DOH determines is necessary in the administration of the program, “Information” includes any requested certification, release or other documentation.
2. Any information supplied by the family must be true and complete.
3. The family is responsible for any HQS breach which is the result of activities by household members or their guests, beyond normal wear and tear or acts of nature, and is not protected under the Violence Against Women Act.
4. The family must allow the LA to inspect the unit at reasonable times and after reasonable notice.
5. The family may not commit any serious or repeated violation of the lease; including but not limited to:
 - Payment of rental portions
 - Maintaining unit in a safe sanitary manner
 - Right to peaceful enjoyment by neighbors
6. The family must notify the LA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner.
 - The family must give written notice of termination to owner and LA at the same time.
7. The family must promptly give the LA a copy of any owner eviction notice.
8. The family must use the assisted unit for residence by the family. The unit must be the family’s only residence.
9. The composition of the assisted family residing in the unit must be approved by the LA. The family must promptly inform the LA of any changes to the household composition. The family must request LA approval to add any other family member as an occupant of the unit.
10. Participant and members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.
11. The family must not sublease or let the unit.
12. The family must not assign the lease or transfer the unit.

Section 19.0 REEXAMINTIONS

19.01 Interim Income Reexaminations

During an interim reexamination only information affected by the changes being reported will be reviewed.

Information Household must submit upon change

- Decreases in Income
- Changes in household compositions
- Change of mailing address

Upon receiving any documentation requested from the family, the LA will process interim reexaminations in the following circumstances **only**:

- when changes submitted by participant will result in a **decrease** in tenant rent;
- In order to add a household member (other than through birth or adoption), including a live-in aide, the participant must request that the new member be added to the lease. The new household member must first be approved by the landlord. When the new household member(s) is/are approved by the landlord, the leasing documents must be amended to include the new household member(s).
 - The individual to be added to the household must also provide his/her Social Security number (if he/she has one) and must verify his/her citizenship/eligible immigrant status.

NOTE: Housing assistance will only be delayed if caused by family action or inaction. The family's revised annual income will be recalculated taking into account the income and circumstances of the new family member.

19.02 Effective Date of Changes for Interim Reexaminations

The LA will give 30 days' notice of any rent increase to the family. If notice of an increase in rent is delayed due to a reason beyond the control of the family, the rent increase will be effective the first of the month after the month in which the family receives a 30-day notice of the amount.

A reduction in participant rent share will be effective the first of the month after the revised family share of rent is determined.

19.03 Annual Reexaminations

An annual reexamination must be completed for each NHTD family. The reexamination must be completed on or prior to the date of the previous year's examination.

The information used for reexamination must be current (within 120 days) of the effective date of the reexamination. The participant should be given a minimum of 90 days, but not more than 120 days, written notice prior to the anniversary date of the reexamination.

19.04 LA responsibility for reexamination and verification.

Information included in the annual reexamination must include:

- All family annual income;

- The value of assets;
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.
-

Household Information is **not** required to be verified via 3rd party verification.

- Standard releases and forms including:
 - Family obligations under the program.
 - The grounds on which the LA may deny or terminate assistance because of family action or failure to act.
 - The LA informal hearing procedures.
- Landlord verification of tenancy
 - Upon the request of the owner the LA must adjust the rent in accordance with HUD CFR §982.519.
 -

The LA may conduct the reexamination via office visit, or by having the participant mail the required documents to the LA's Office. However, the LA may conduct a home visit for the purpose of completing the annual reexamination, upon request.

The initial reexamination notice must inform the family of the required documents and the deadline (or the date to appear in the LA office for the reexamination) for submitting all required documents and requested information.

If the family fails to respond to the initial/first notice, a second notice must be sent to the family and Service Coordinator & RRDS informing them that the family has failed to submit the required information for reexamination. A second request and a copy of the previously sent notice must be sent to the family and Service Coordinator/RRDS.

If the family fails to respond to the second notice a termination notice must be mailed to the family and Service Coordinator/RRDS.

19.05 Public Assistance Income Calculations

Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) will be included in annual income only to the extent that such payments :

- Qualify as assistance under the TANF program as defined in 45 CFR 260.31; and
- Are not otherwise excluded from income under 24 CFR 5.609 (c).
- If the welfare assistance payments include an amount specifically designated for shelter and utilities, the amount of welfare assistance income to be included as income should consist of:
 - The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities; or
 - The prorated amount as determined by the Department of Social Services (DSS) for families receiving SSI income.

19.06 Earned Income Disregard

24 CFR 5.609 as utilized under the Section 8/ HCV program shall be the formula used to calculate treatment of the Earned Income Disregard (EID). With regard to EID for disabled individuals in receipt of Social Security benefits:

‘Previously unemployed’ means, A person who has earned no more than the equivalent of 500 hours of work at the state or local minimum wage in the past 12 months.

LAs must exclude 100% of a family’s increased income from earnings for an initial period of 12 months and 50% of the increased earned income for an additional 12 month period. A tenant is eligible to receive the EID during a lifetime 48-month period from the time that the EID is first applied for the affected tenant. The time begins to run at the reexamination date when the LA would have otherwise raised the tenant's rent in response to a reported income increase.

Benefits received under the PASS [Plan to attain Self-sufficiency] or other Self-sufficiency program shall be excluded as dictated in 24CFR5.609.

Section 20.0 PARTICIPANT PAYMENTS FOR AMOUNTS OWED THE LA

LAs assume all day-to-day responsibility for enforcing the requirements of this section and for ensuring that monies collected are promptly returned to HTFC.

A participant is responsible for reporting all changes in income and household composition to the LA at the time of annual reexamination. If a participant fails to report these changes an overpayment of Assistance Payments (APC) may occur. The participant is responsible for repaying any amount overpaid on his/her behalf to the NHTD Housing subsidy Program.

The amount the participant will be required to repay shall be the **lesser** of 30% AGI for the period the household rent would have been adjusted had the income been reported or the amount of APC overpaid for the period when the household rent would have been adjusted.

20.01 Repayment Agreements – General

A participant's obligation of this nature may be satisfied by either paying the full amount due immediately upon the LA's request or through a repayment agreement approved by the LA. A repayment agreement between the LA and a participant is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the LA upon default of the agreement.

LAs will **not** enter into repayment agreements under the following circumstances:

- the participant already has an agreement in force;
- the LA determines that the family has committed additional program fraud during the term of the repayment agreement; or
- the LA determines that the debt amount is larger than can be repaid within 12 months.

There is no maximum dollar amount for considering whether or not the LA will enter into a repayment agreement. However, if the amount owed cannot, as determined by the LA, be repaid within 12 months, the LA will not give the participant the opportunity to enter into such agreement and the participant may be terminated from the program.

The LA will provide, as prescribed by HTFC, a list of the names and addresses of all households who are in repayment agreements under the Statewide Nursing Home Transition and Diversion housing subsidy Program.

Funds collected due to fraud must be in the form of a certified check or money order and must be made payable to 'Housing Trust Fund Corporation'.

20.02 Late Payments

A payment under a participant repayment agreement will be considered in arrears if payment has not been received by the LA by the close of business on the day in which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.

If the repayment agreement is in arrears and the family has not contacted or made arrangements with the LA, prior to the day payment is due the LA will require the balance to be paid in full. If the participant subsequently fails to pay the full amount due within 30 days, the LA may terminate assistance.

Section 21.0 RESTRICTIONS ON MOVES BY A PARTICIPANT FAMILY

During the initial 12 months of assisted occupancy, participant families who wish to move will be allowed to move only under the following conditions:

- the LA has terminated the Assistance Payments Contract (APC) contract due to an owner's breach of responsibility (e.g.-failure to correct Housing Quality Standards (HQS) violations); or
- the owner and family have agreed to mutual rescission of the lease;

NOTE: This provision may only be utilized once within any 12-month period by a participant and owner.

Participant families will **not** be permitted to move more than once in a 12-month period unless the LA approves the move based on a documented reason over which the participant has no control (e.g.-owner's failure to correct HQS violations, notice from Service coordinator/RRDS).

The LA may deny permission to move if:

- the participant families has violated a family obligation;
- the participant families has moved within the last 12 months.

Participant families are required to give proper written 30-day notice of intent to terminate the lease. During the initial term Participant families may not end the lease unless the Participant family and the owner mutually agree to end the lease and submit in writing to the LA a statement signed by the owner and tenant that the lease is being mutually terminated and the effective date of the termination. If the participant moves from the unit before the initial term of the lease ends without the owner's and the LA's approval, it will be considered a serious lease violation and will be subject to termination from the program.

The participant family is required to give the LA a copy of the notice to terminate the lease at the same time it gives the notice to the landlord. Failure to provide a copy of the lease termination notice to the LA will be considered a violation of obligations and will be deemed cause for termination from the program.

Section 22.0 HOUSING QUALITY STANDARDS (HQS) INSPECTIONS

Housing Quality Standards (HQS) are minimum standards for HUD tenant-based programs and are required both at initial occupancy and during the term of the lease. Requirements for habitability and eligibility for subsidy shall be uniform with those set forth in HUD § 982.401-406. HQS standards apply to the building and premises, as well as to the unit. Newly leased units must pass the HQS inspection **before** the beginning date of the assisted lease and Assistance Payments contract (APC).

This section describes LA procedures for performing HQS and other types of inspections and LA standards for the timeliness of repairs. It also explains the responsibilities of the owner and family and the consequences of non-compliance with HQS requirements for both families and owners.

22.01 Requirements and Guidelines for Inspections

When a Request for Tenancy Approval (RFTA) is submitted, the unit being offered must be available for inspection no later than 60 days from the date of RFTA submission.

The LA will inspect all units to ensure that they meet Housing Quality Standards (HQS). No unit will be initially placed on the NHTD Program unless HQS is met. Units will be inspected at least annually, and at other times as needed, to determine if units meet HQS.

The LA must be allowed to inspect the dwelling unit at reasonable times with reasonable notice. The family and owner will be notified of the inspection appointment by mail or by phone. If the owner and/or family can not be at home for the scheduled inspection appointment, the owner or family must make arrangements to enable the LA to enter the unit and complete the inspection.

If the owner or family misses the scheduled inspection and fails to reschedule the inspection, the LA will only schedule one more inspection. If the family misses two inspections, the LA will send a second notice to the RRDS to mitigate and ensure compliance with program regulations and access to unit for the purpose of inspection. The LA must be permitted to inspect the unit within 10 business days of notice or the LA may consider the family to have violated family obligations and may terminate assistance.

HQS will be the minimum requirement for approving units proposed for NHTD assistance. Although the LA is **not** required to enforce standards set forth in the New York State Building/Housing Codes and/or the other building/housing codes in any areas within the local LA's jurisdiction, LAs will cooperate, to the greatest extent possible, with local code enforcement officials to obtain uniformity of inspections.

Efforts will be made at all times to encourage owners to provide housing above HQS minimum standards. The LA will not promote any additional acceptability criteria which are likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

All utilities must be in service prior to the HQS inspection. If the utilities are not in service at the time of inspection, the inspector will notify the tenant or owner (whomever is responsible for the utilities according to the Request for Tenancy Approval) to have the utilities turned on.

Either the inspector will schedule a reinspection, or the owner and tenant will both certify that the utilities are on.

If the tenant is responsible for supplying the stove and/or the refrigerator, the LA will allow the stove and refrigerator to be placed in the unit after the unit has passed all other HQS. The family must then certify that the appliances are in the unit and working. Although not required, the LA may conduct a reinspection if deemed necessary by the LA.

Following are the types of inspections the LA will perform:

1. **Initial**--an inspection that must take place to insure that the unit passes HQS before assistance can begin; Conducted upon receipt of Request for Tenancy Approval;
2. **Annual**--an inspection to determine that the unit continues to meet HQS; this inspection must be conducted within 12 months of the last annual inspection;
3. **Complaint**--an inspection caused by the authority receiving a complaint regarding the unit by anyone, including the tenant;
4. **Special**--an inspection requested by a third party (i.e. – Service Coordinator request);
5. **Emergency**--an inspection that takes place in the event of a perceived emergency; these will take precedence over all other inspections; and

22.02 Initial HQS Inspections

The LA will inspect the unit, determine whether the unit satisfies HQS and notify the family and owner of the determination in as timely a manner as possible, but in any case within 10 business days following receipt of RFTA.

The LA will make every reasonable effort to conduct initial HQS inspections for the family and owner in a manner that is time efficient and indicative of good customer service.

The LA will periodically review the average time required for a family and owner to have a unit inspected from the time the RFTA is submitted by the family and owner to the LA.

The initial inspection will be conducted to:

- determine if the unit and property meet HQS as defined in this Guide;
- document the current condition of the unit to assist in future evaluations whether the condition of the unit exceeds normal wear and tear; and

If the unit fails the initial HQS inspection, the family and owner will be advised to notify the LA once repairs are completed.

22.03 Annual HQS Inspections

The LA will conduct HQS inspections within 12 months of the last annual inspection. Special inspections may be scheduled between anniversary dates.

HQS deficiencies which cause a unit to fail must be corrected by the landlord unless it is a deficiency for which the tenant is responsible.

The owner and/or family must allow the LA to inspect the unit at reasonable times with reasonable notice.

Inspections will be conducted on business days only during normal business hours of the LA.

Weekend inspections may be conducted under extenuating circumstances at the LA's discretion. The LA will provide the family with as much notice possible when scheduling the inspection.

If the owner or family is unable to be present at the inspection, he/she must reschedule the appointment within five business days.

If the family has been required to be at an inspection, misses the appointment and does not contact the LA to reschedule the inspection, or if the family misses two scheduled inspection appointments, the LA will consider the family to have violated a family obligation and the family's assistance will be terminated in accordance with the termination procedures in this Guide.

22.04 Verification of HQS Deficiencies

The LA may elect to do a reinspection to verify that all HQS deficiencies have been corrected. A reinspection is not necessary if the LA can obtain verification by other means.

Other than in the case of life threatening deficiencies a LA may accept an owner's and/or family's written certification that the deficiencies have been corrected.

When the deficiencies are the responsibility of the family, the owner or a representative of the owner must also certify that the deficiencies have been corrected.

When the deficiencies are the responsibility of the owner, the family must also certify that the deficiencies have been corrected.

Verification that repairs were completed may be made at the next on-site inspection.

The LA should base the verification process on the severity of corrections to be made and/or the LA's experience with the owner and property.

22.05 Reinspections

If an on-site reinspection is required and the family and/or owner are not at home for the reinspection appointment, the LA will leave a notice at the unit verifying the inspector's attempt to conduct the inspection.

The LA will schedule a reinspection of the unit. A notice of the reinspection will be provided to the owner and the family. The notice may contain a warning that payments will be abated (in the case of owner's responsibility), or a warning of intent to terminate (in the case of family's responsibility).

22.06 Notification of HQS Failures

When a unit fails HQS inspection, the LA must notify the owner in writing of the amount of time that will be allowed to correct any items noted as fail. The amount of time allowed will be determined by the LA based on the amount time standards described in Section 22.07. If the time period allowed to correct the repairs has elapsed and the LA has not granted an extension of time, the family must select another unit for assistance.

22.07 Time Standards for Repairs

Emergency items which endanger the family's health or safety must be corrected by the owner within 23 hours of notification. (See "Emergency Repair Items,")

For **non-emergency items**, repairs must be made within 30 days.

For **major repairs**, the LA may approve an extension beyond 30 days.

22.08 Rent Increases

Rent to owner increases may not be approved if the unit is in a failed condition.

22.09 Move Out /Vacate Inspections

The LA may, at their discretion, conduct a move-out inspection at the request of the tenant and/or landlord. If possible, both the tenant and landlord should be present for this inspection.

22.10 Special/Complaint Inspections

If at any time the LA is notified that the unit does not meet HQS, the LA will conduct an inspection.

The LA will inspect only the items which were reported, but if the inspector notices additional deficiencies that would cause the unit to fail HQS, the responsible party will be required to make the necessary repairs.

If the annual inspection date is within 120 days of a special inspection and as long as all items are inspected that are included in an annual inspection, the special inspection will be categorized as annual and all annual procedures will be followed.

22.11 Quality Control Inspections

Quality control inspections will be performed by the LA when the total number of participants in that jurisdiction is greater than 10. Such inspections will be performed on no less than on 3% of average number units leased for the prior twelve month period. The purpose of quality control inspections is to ascertain that each inspector is conducting accurate and complete inspections and to ensure that there is consistency among inspectors in application of HQS. The sampling of files will include completed inspections in a cross-section of neighborhoods, and a cross-section of inspectors.

22.12 Accessibility Modifications to HQS

Modifications or adaptations to a unit due to a disability must meet all applicable HQS.

22.13 Emergency Repair Items

The following items are considered of an emergency nature and must be corrected by the owner or tenant (whoever is responsible) within 23 hours of notice by the inspector:

- lack of security for the unit;
- waterlogged ceiling in imminent danger of falling;
- major plumbing leaks or flooding;
- natural gas leak or fumes;
- electrical problem which could result in shock or fire;
- no heat when outside temperature is below the Fahrenheit degree level consistent with LA's local building codes and temperature inside is below the Fahrenheit degree level consistent with LA's local building codes;
- inoperable smoke detector;
- utilities not in service;
- no running hot water;
- broken glass where someone could be injured;
- obstacle which prevents tenant's entrance or exit; and
- lack of functioning toilet.

In those cases where there is leaking gas or potential of fire or other threat to public safety, and the responsible party cannot be notified or it is impossible to make the repair, proper authorities will be notified by the LA.

If the emergency repair item(s) are not corrected in the time period required by the LA and the owner is responsible, the Assistance Payment will be abated and the APC will be terminated.

If the emergency repair items are not corrected in the time period required by the LA and it is an HQS breach which is a family obligation, the LA may terminate the assistance to the family.

22.14 Lead Based Paint

Families/persons will **not** be allowed to **move into a unit** unless it passes the HQS inspection, including required lead testing and clearance.

If a child under the age of six with non-environmental intervention blood lead levels (EIBLL) resides in a unit that fails re-inspection, the family must move to an approved unit or lose the rental subsidy.

22.15 Smoke Detectors

Inoperable smoke detectors are a serious health threat and will be treated by the LA as an emergency (23-hour) fail item. If the smoke detector is not operating properly, the LA will contact the owner by phone and request the owner to repair the smoke detector within 23 hours. The LA will reinspect the unit the following day.

If the LA determines that the family has disconnected the smoke detector (by removing batteries or other means), the family will be required to repair the smoke detector within 23 hours and the LA will reinspect the unit the following day.

The LA will issue a written warning to any family determined to have purposely disconnected the unit's smoke detector. The warning will state that deliberate disconnection of the unit's smoke detector is a health and fire hazard and is considered a violation of HQS.

22.16 Determination of Responsibility

Certain HQS deficiencies are considered the responsibility of the family:

- Tenant-paid utilities not in service;
- Failure to provide or maintain family-supplied appliances; and
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. Normal wear and tear is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

The owner is responsible for all other HQS violations, including vermin infestation even if alleged to have been caused by the family's living habits. However, if such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. The LA may terminate the family's assistance on that basis.

The owner or participant may appeal the determination to the LA within five business days of the inspection. If the family is responsible for damages but the owner carries out the repairs, the owner may bill the family for the cost of the repairs.

22.17 Consequences When Owner is Responsible (Non-Emergency Items)

When it has been determined that a unit on the program fails to meet HQS, and the owner is responsible for completing the necessary repair(s) in the time period specified by the LA, the assistance payment to the owner will be abated.

A Notice of Abatement will be sent to the owner stating that the abatement will be effective from the day after the date of the failed inspection. The LA will determine the deadline for completing deficiencies, depending on the nature of the repair(s) needed.

The LA will also determine the time period for which abated units should be inspected, depending on the owner's notification that the work has been completed.

Upon notification that the required work is completed, the LA will advise both owners and tenants of the reinspection date. If the owner makes repairs during the abatement period, payment will resume on the day the unit passes inspection.

No retroactive payments will be made to the owner for the period of time the rent was abated and the unit did not comply with HQS. The notice of abatement states that the tenant is not responsible for the LA's portion of rent that is abated.

22.18 Reduction of Payments

The LA may grant an extension in lieu of abatement in the following cases:

- the owner has a good history of HQS compliance;
- the failed items are minor in nature;

- there is an unavoidable delay in completing repairs due to difficulties in obtaining parts or contracting for services;
- the owner makes a good faith effort to make the repairs;
- the repairs are expensive (such as exterior painting or roof repair) and the owner needs time to obtain the funds; or
- The repairs must be delayed due to climate conditions.
- The extension will be made for a period of time to be determined by the LA. At the end of that time, if the work is not completed or substantially completed, the LA may terminate assistance.

22.19 Termination of Contract

If the owner is responsible for repairs and fails to correct all the deficiencies cited prior to the end of the abatement period, the owner will be sent an APC Proposed Termination Notice. Prior to the effective date of the termination, the abatement will remain in effect.

If repairs are completed before the effective termination date, the termination may be rescinded by the LA if the tenant chooses to remain in the unit. No more than two HQS inspections will be conducted after the termination notice is issued.

22.20 Consequences When Family Is Responsible

If emergency or non-emergency violations of HQS are determined to be the responsibility of the family, the LA will require the family to make any repairs or corrections within a time period consistent with the owner requirement for completing deficiencies. If the repairs or corrections are not made in this time period, the LA may terminate assistance to the family, after providing an opportunity for an informal hearing. Extensions in these cases must be approved by the LA. The owner's rent will not be abated for items which are the family's responsibility.

If the tenant is responsible and corrections are not made, the APC will terminate when assistance is terminated.

Section 23.0 REASONABLE ACCOMODATION & MODIFICATION GUIDANCE

A "*Reasonable Accommodation*" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

For Example: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

For Example: A Tenant's gross rent exceeds the payment standard because their average utility cost greatly exceeds that which is outlined in the standard utility allowance, due to durable medical equipment [i.e. ventilator, electric wheelchair etc.]. As a result the tenant requests an 'exception rent' to assist them to relieve this hardship. The Provider may increase the payment standard, upon approval by HTFC, for that tenant to 110% of the payment standard as a reasonable accommodation to relieve the tenant's financial burden.

23.01 Denial of request for a reasonable accommodation:

The LA may deny a request for a reasonable accommodation if:

- If there is no disability-related need for the accommodation; or
- If providing the accommodation is not reasonable - *i.e.*, if it would impose an undue financial and administrative burden.

When the LA refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the LA must grant it.

23.02 Reasonable Modification

A "*Reasonable Modification*" is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy.

Denial of such modification is prohibited under the Fair Housing Act, when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises. The housing provider must permit the modification. However, the tenant is responsible for paying the cost of the modification.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability.

➤ Reasonable Accommodation v. Reasonable Modification:

- A reasonable *modification* is a structural change made to the premises whereas;
- A reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service.

A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.

Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable *accommodation* whereas, the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable *modification*.

For Example: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable *modification* and must be permitted at the tenant's expense.

For Example: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable *accommodation*, and the housing provider must grant the accommodation.

Section 24.0 SCREENING OF PARTICIPANTS

Screening for suitability as a tenant is the responsibility of the owner. Upon the written request of a prospective owner, the LA will provide any factual information or third party written information they have relevant to a voucher holder's history of, or ability to, comply with material standard lease terms, such factors as:

- payment of rent and utility bills;
- caring for a unit and premises;
- respecting the rights of other residents to the peaceful enjoyment of their housing;
- drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
- Compliance with other essential conditions of tenancy

The owner is responsible for screening and selection of the family to occupy the owner's unit. The LA will not be liable or responsible to the owner or other persons for the family's behavior or the family's conduct in tenancy.