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§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant based rental assistance for a family pursuant to this section. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

(b) *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

(c) *Tenant selection.* The participating jurisdiction must select families in accordance with written tenant selection policies and criteria that are consistent with the following:

(1) *Low-income families.* Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

(2) *Preferences for Individuals with Special Needs.* (i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(3) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program. Participating jurisdictions using HOME funds for tenant-based rental assistance programs may establish local preferences for the provision of this assistance. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

(d) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed,

subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(g) *Tenant protections.* The lease must comply with the requirements in § 92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or

(ii) For each unit size, may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 24 CFR 882.106(a)(3) for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) *Security deposits.*

(1) A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant based rental assistance under this section.

(2) The relevant State or local definition of "security deposit" in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(4) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with § 92.503.

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate

a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(1) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.214 Prohibited activities.

(a) HOME funds may not be used to:

(1) Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;

(3) Provide non-federal matching contributions required under any other Federal program;

(4) Provide assistance authorized under section 9 of the 1937 Act (Public Housing Capital and Operating Funds);

(5) Provide assistance to eligible low income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;

(6) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(7) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or

(8) Pay delinquent taxes, fees or charges on properties to be assisted with HOME funds.

(9) Pay for any cost that is not eligible under §§ 92.206 through 92.209.

(b) Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28929, May 28, 1997; 67 FR 61756, Oct. 1, 2002]

§ 92.216 Income targeting: Tenant based rental assistance and rental units.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(a) Not less than 90 percent of:

(1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the

basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

(1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by such households.

CONFLICT OF INTEREST 24 CFR 92.356

24 CFR Subtitle A (4–1–02 Edition)

§ 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.*

No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.*

The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
- (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (6) Any other relevant considerations.

(f) *Owners and Developers.*

(1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether

private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

[61 FR 48750, Sept. 16, 1996, as amended at 62 FR 28930, May 28, 1997]

Kansas Housing Resources Corporation (KHRC)

Tenant Based Rental Assistance (TBRA)

Overview and Purpose

Under the *HOME Investment Partnerships Program*, the Kansas Housing Resources Corporation allocates funds for *Tenant Based Rental Assistance* (TBRA) to eligible grantees to assist individual households in making housing affordable. TBRA payments make up the difference between the amount the family can afford to pay for housing costs (rent and utilities) and the actual costs.

The rental assistance is tenant-based, not project-based. Tenants must be free to use their assistance in any eligible unit.

General Requirements

Selection for Participation in TBRA Program

Not less than 90 percent of the families receiving TBRA rental assistance are families whose annual income does not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families at the time of occupancy.

For the purposes of the TBRA program, the remainder of the families receiving TBRA rental assistance can be households with incomes that do not exceed 80% of the area median income.

A family becomes a participant in the TBRA program when the local housing agency (LHA) executes a Rental Assistance Contract with an Owner/Landlord for housing assistance payments on behalf of the family.

The LHA must determine whether an applicant:

- a. Qualifies as a family;
- b. Is income-eligible; and,
- c. Is a member of an applicable target population?

Definition of Family and Other Related

Terms

The following definitions shall be applicable to all housing assisted under the TBRA Program:

- a. *Dependent*. A member of the family household (excluding foster children) other than the family head or spouse,

who is under 18 years of age or is a person with disabilities, or is a full-time student.

- b. *Disabled person*. A person who is under a disability as defined in Section 223 of the *Social Security Act* (42 USC 423), or who has a developmental disability as defined in Section 102(7) of the *Developmental Disabilities Assistance and Bill of Rights Act* (42 USC 6001(7)).
- c. *Displaced person*. A person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized under Federal disaster relief laws.
- d. *Elderly family*. A family whose head or spouse (or sole member) is an Elderly, Disabled, or Handicapped person. It may include two or more elderly, disabled, or handicapped persons living together, or one or more of those persons living with one or more live-in aides.
- e. *Elderly person*. A person who is at least 62 years of age.
- f. *Family*. "Family" includes, but is not limited to:
 - i. An elderly family or single person as defined in this part.
 - ii. The remaining member of a tenant family.
 - iii. A displaced person.
- g. *Handicapped person*. A person having a physical or mental impairment that:
 - i. Is expected to be of long-continued and indefinite duration.
 - ii. Substantially impedes the person's ability to live independently, and,
 - iii. Is of such a nature that the tenant's disability could be improved by more suitable housing conditions.
- h. *Live-in Aide*. A person who resides with

an elderly, disabled, or handicapped person, or persons who:

- i. Is determined to be essential to the care and well-being of the person(s);
- ii. Is not obligated for the support of the person(s); and,
- iii. Would not be living in the unit except to provide the necessary supportive services.
- iv. Is not related to the household receiving the rental assistance.
- v. The income of the Live-in Aide shall not be counted as household income. The Live-in Aide may be counted in terms of household/unit size as long as the Live-in Aide resides with the tenant on a full-time basis.
- vi. Part time Live-in Aides may not be counted in terms of family or unit size.
- vii. A Live-in Aide may only reside in the unit with the approval of the Housing Authority/Grantee. The tenant's physician must sign the Physician's Verification of Live-in Aide form. The form must be placed in the tenant file.
- viii. The tenant, Live-in Aide and the Landlord must sign the Live-in Aide Housing Agreement. A copy of the agreement must be placed in the tenant file.
- ix. The Live-in Aide qualifies for occupancy only as long as the tenant needs supportive services. In the event the tenant no longer requires a Live-in Aide, the TBRA subsidy shall revert to HUD guidelines as to the applicable rents for the number of bedrooms allowed for the household.
- x. If the household member requiring assistance dies, the Live-in Aide shall vacate the unit within ten days of said household member's death. If the household member

requiring assistance moves out, the Live-in Aide shall vacate the unit no later than said household member's vacate date. Upon the termination of the Live-in Aide's services for any other reason, the Live-in Aide shall vacate the unit within 24 hours.

- xi. The Live-in Aide shall not violate any of the landlord's house rules. The Landlord may evict the Live-in Aide if s/he violates any of the House Rules.

- i. *Single person.* A person who lives alone or intends to live alone, and who does not qualify as an elderly family or a displaced person, or as the remaining member of a tenant family.

Determining Annual Income

Annual income is the anticipated total income from all sources received by the family head and spouse (even if temporarily absent) and by each additional member of the family, including all net income derived from assets for the 12-month period following the effective date of certification of income.

Annual income includes, but not limited to:

- a. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services.
- b. The net income from operation of a business or profession.
- c. Interest, dividends, and other net income of any kind from real or personal property.
- d. The full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including lump-sum payment from a delayed start of a periodic payment.
- e. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay.
- f. Periodic and determinable allowances,

such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.

- g. All regular pay, special pay, and allowances of a member of the Armed Forces.

Annual income does not include the following:

- a. Income from employment of children (including foster children) under the age of 18 years.
- b. Payments received for the care of foster children.
- c. Lump-sum additions to family assets, such as inheritances, insurance payments, capital gains, and settlement for personal or property losses.
- d. Amounts received by the family that is specifically for, or in reimbursement of the cost of medical expenses for any family member.
- e. Income of a Live-in Aide.
- f. Amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the Government for use in meeting the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of the student.
- g. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- h. Amounts received under training programs funded by HUD.
- i. Temporarily, nonrecurring or sporadic income (including gifts).
- j. If it is not feasible to anticipate a level of income over a 12-month period, the income anticipated for a shorter period must be annualized.

Verification of Income

It is the obligation of the LHA to obtain complete information from applicants and thoroughly document the methods by which it has verified all pertinent information in the applicant's file.

The LHA must abide by the rules and regulations contained in HUD Handbook 7420.7 concerning which information must be verified and documented in the applicant's file.

Tenant Selection

The LHA selects families for TBRA in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to very-low and low-income families and according to preference rules established under *24 CFR Part 92*.

Local Preferences

The LHA may select local preferences based along the following guidelines:

- a. No preferences may be based upon the identity or location of the housing, which is occupied or proposed to be occupied by the applicant, nor the length of time the applicant has lived in the jurisdiction. Therefore, priorities established which give preferences to residents of a particular apartment complex, to those that are lease-in-place, to those that have resided in the jurisdiction for a specific duration, etc. are prohibited.
- b. All local preferences must be approved by the KHRC.

Waiting List

After a family has been determined eligible for the TBRA program, the LHA shall place the family on a waiting list. The LHA may create separate waiting lists for TBRA families or use the existing LHA waiting list.

The waiting list should show the family's name, date and time of application, local preferences if applicable, and appropriate size of units in bedroom.

Families currently on a LHA waiting list, i.e. Section 8, who received TBRA shall not be harmed or removed from the LHA waiting list.

In any case where assistance under Section 8 becomes available, recipients of TBRA will qualify for tenant selection preferences to the same extent as when they received TBRA.

The waiting list shall comply with *24 CFR Part 92.253(d)*.

Determination of Family Unit Size

The unit size designated shall be assigned in accordance with the following criteria:

- a. The bedroom size assigned shall not require more than two persons to occupy the same bedroom.

- b. The bedroom size assigned shall not require persons of opposite sex, other than husband and wife, to occupy the same bedroom with the exception of infants and very young children.
- c. A two-bedroom unit may be used by a two- member family which consists of a single parent and child or by a couple who, due to medical reasons, must have separate bedrooms, as approved by the LHA.
- d. Based on the above criteria, the following standards shall be used:

Number of persons		
Unit Size	Minimum	Maximum
1 bdr	1	2
2 bdr	2	4
3 bdr	4	6
4 bdr	6	8
5 bdr	8	10

- e. The criteria and standards prescribed for the determination of an applicant's unit size to be listed on the Rental Coupon should apply to the vast majority of families. In some cases, however, the relationship, age, sex, health, or handicap of the family members may warrant the assignment of a larger unit size. Such flexibility is permissible to the extent the determinations are made on the basis of these factors. Such allowable determination should be fully documented in the applicant's file.

Issuance of Rental Coupon

The *Tenant Based Rental Assistance Coupon* is the sole document, which authorizes the family to look for an eligible rental unit for the TBRA program. The *Rental Coupon* specifies the appropriate unit size necessary to meet the family's needs.

The *Rental Coupon* also sets forth a number of requirements regarding both Family and LHA responsibilities that apply only while the *Rental Coupon* is in effect but also after the *Rental Assistance Contract* is executed on behalf of the family.

The *Rental Coupon* term is for a 60-day period, within which the family must submit a Request for Unit Approval if it is to utilize the *Rental Coupon*. The LHA may extend the term to a maximum 60-day additional period.

The *Rental Coupon* is only valid within the jurisdiction of the LHA. Therefore, *Rental Coupons* are not portable outside the jurisdiction of the LHA.

The LHA shall give one copy of the *Rental Coupon* to the applicant, and retain one copy in the applicant file.

Briefing Session

When a family receives a *Rental Coupon*, the LHA must conduct a briefing session to provide the family with an explanation of program requirements, information to assist it in finding a suitable unit, and an explanation of family and owner responsibilities.

The information and specific items which must be given to families in the briefing session are, but not limited to:

- a. Families and owners responsibilities under the lease and contract;
- b. How to find a suitable unit;
- c. The location and characteristics of the full range of neighborhoods in which the LHA is able to execute *Rental Assistance Contracts*;
- d. Applicable Fair Market Rents (FMRs), how the Gross Family Contribution (GFC) is determined, and how housing assistance payments are determined.
- e. Information to the families concerning Housing Quality Standards (HQS) inspections, *Rental Assistance Contract*, and other pertinent documents and forms. The LHA shall also supply the family with a *Rental Coupon Holder's Packet*. The packet shall contain:
 - 1. LHA schedule of allowances for tenant-furnished utilities and other services.
 - 2. Information regarding lead-based paint poison hazards, symptoms, and precautions.
 - 3. *Request for Unit Approval*

Lease Approval

After a family finds a unit, which is suitable for its needs, it must submit a completed *Request for Unit Approval*, signed by both parties, to the LHA along with a copy of the proposed lease, if supplied by the owner/landlord.

The LHA shall review the request to determine if the owner is eligible, if the unit is eligible, if the lease complies with the program requirements governing prohibited and required lease provisions, and if the lease complies with state and local laws.

The information provided by the owner and tenant on the form is used as part of the basis for determining if the unit abides with the FMR, the rent reasonableness, and to schedule the unit inspection.

The *Request for Unit Approval* must be submitted while the family's *Rental Coupon* is effective.

Fair Market Rents

The TBRA program is based on the premise that decent, safe, sanitary, and affordable housing can be obtained on the private market for very low to low-income families. The unit chosen by the family should not exceed HUD published Fair Market Rents (FMRs).

A LHA may approve, on a unit-by-unit basis, a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

A unit is determined to fall within the FMR of a specific area by adding the contract rent and the applicable utility allowance for the unit. For the purposes of the TBRA program subsidy, the sum of both numbers cannot exceed the FMR of a unit. The tenant may select a unit that falls over the FMR if the unit meets rent reasonableness standards in the area and if the tenant is willing to pay the excess rent. No unit assisted by TBRA can be less than 80 percent of the published FMR for the unit.

Rent Reasonableness

The LHA must certify all units assisted with TBRA are reasonable in relation to rents currently being charged for comparable units in the private unassisted market, and not in excess of rents currently being charged by the owner for

comparable unassisted units.

It is not sufficient to approve a unit merely because its gross rent is within the applicable FMR limitations.

Housing Quality Standards (HQS)

Housing occupied by a family receiving TBRA must meet the performance requirements set forth in *24 CFR 982.401*.

A certified HQS inspector(s) must complete all HQS inspections.

No LHA shall execute a *Rental Assistance Contract* for a unit that has not passed the HQS inspection.

Lead Based Paint

The TBRA program must adhere to Federal Regulation *24 CFR Part 35* that took effect January 2002.

- a. Tenants must receive the fact sheet “*Ten Tips to Protect Children from Pesticide and Lead Poisonings around the Home*” (EPA) and the pamphlet “*Protect Your Family from Lead*” (EPA) at the time of application.
- b. Tenants must receive the Elevated Blood Level form (tenant signature optional) and the Tenant Notice of Defect/Notice of Elevated Blood Level Above 15 ug form prior to move in.
- c. A sign off form indicating that the tenant has received the four documents must be in place in tenant files.
- d. Visual assessment of units built prior to 1978 must take place during the HQS inspection. Exemptions include 0 bedroom units, SROs, and units exclusively for the elderly and disabled where children age 6 and under will not/do not occupy the unit.
- e. Lead based paint stabilization/abatement procedures must take place at the expense of the owner within 30 days of notification to the owner (*24 CFR Part 35.1330(a) and (b)*).
- f. Owner must provide a copy of the clearance report performed in accordance with *24 CFR 35.1340* whenever paint stabilization is undertaken. Owner must provide tenant with a written notice of the results of

- the clearance exception (24 CFR 35.1215(c).
- g. Owners must pay for stabilization and/or abatement procedures prior to move-in. If the owner declines to provide stabilization or abatement, another unit must be selected.
 - h. Owners must pay for stabilization and/or abatement procedures following move-in if deteriorated paint is identified during annual or periodic inspections.
 - i. The owner of the unit must meet the requirements of paint stabilization as defined in 24 CFR Part 35.110. Paint stabilization must be conducted in accordance with procedures outlined at 24 CFR 1330(a) & (b). If the owner does not complete paint stabilization, the dwelling unit is in violation of Housing Quality Standards (HQS).
 - j. If lead based paint or deteriorated paint in non-exempt units is identified following move in and/or during an annual or periodic reinspection, depending on the scope of the work to stabilize the paint, and if necessary, the owner is responsible for relocating the tenants to a comparable dwelling free of lead based paint hazards while the work is taking place.
 - k. Owner must adopt procedures to ensure that on-going maintenance activities are conducted in accordance with 24 CFR 35.1355 during the term of assisted tenancy.
 - l. Identification of the number of units built prior to 1978 and the number of children and pregnant women residing in each unit must be provided on TBRA tenant project set-up forms.
 - m. LHA shall report the name and address of a child found to have an elevated blood level to the local health department within five working days (24 CFR Part 35 subpart 1225e).
 - n. At least quarterly, LHAs providing TBRA rental subsidies shall provide an updated report of pre-1978 addresses with children under age six and/or pregnant women to the local health department (24 CFR Part 35 subpart 1225f). At the same time, LHAs providing TBRA rental subsidies shall attempt to get the names and addresses

of children under age 6 with an elevated blood level from the health department.

Leases

The LHA may provide leases that incorporate the TBRA program required lease provisions. Owners can use the LHA supplied leases or their own, as long as they are not of the type prohibited under the program.

The lease between a tenant and an owner of rental housing assisted with TBRA funds must be for not less than one year in programs that are not participating in self-sufficiency programs. The LHA may renew a lease for an additional year. The total time allocated for a family to receive TBRA must be not more than two years per grant award.

The lease must contain certain required provisions which include the tenant and the LHA shares of the rent, the landlord's responsibility for maintenance and services, any utilities and appliances which the owner will provide, the condition necessary for eviction, the prohibition against discrimination, and the amount of security deposit.

The lease may not contain any of the following provisions:

- a. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- b. *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law.
- c. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- d. *Waiver of notice.* Agreement of the tenant that the owner may institute a

- lawsuit without notice to the tenant.
- e. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - f. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury.
 - g. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
 - h. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant however, may be obligated to pay costs if the tenant loses.

The owner may not terminate the tenancy or refuse to renew the lease of the tenant except for serious or repeated violation of the terms and conditions of the lease; for violations of applicable federal, state, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days notice by the owner specifying the grounds for the action.

Security Deposit

A LHA may use TBRA funds to provide loans or grants for security deposits. TBRA security deposits can be made whether the LHA provides any other on- going rental assistance.

If an LHA pays a security deposit only and does not provide any other rental assistance, the following criteria must be followed:

- a. The family, housing unit and all other eligibility criteria for rental assistance must be followed;
- b. Only the prospective tenant may apply for security deposit assistance;
- c. The LHA must pay the security deposit directly to the owner; and,
- d. The security deposit may not exceed the equivalent of one months' contract rent for the unit.

If an LHA pays a security deposit in addition to providing on-going rental assistance, the following criteria must be followed:

- a. Only the prospective tenant may apply for security deposit assistance;
- b. The LHA must pay the security deposit directly to the landlord;
- c. The security deposit may not exceed one month's contract rent for the unit. If the unit is furnished and/or a pet deposit is required, an additional ½ month's rent for either circumstance may be collected. The total security deposit must not exceed the equivalent of two months rent.
- d. The security deposit shall be used to provide compensation to the owner if the tenant, upon vacating, owes money for damages and unpaid rent in the unit;
- e. If the LHA provides security deposit assistance through the use of a grant, the lease should specify who receives any security deposit funds returned from the owner upon the tenant vacating the unit.
- f. If the LHA provides security deposit assistance through the use of a loan, the lease should reflect that the tenant receives any return of security deposit money, less any amount owed on the loan from the LHA.
- g. The LHA, upon receiving the return of deposits, must use the funds for future security deposits under the guidelines of the program.

Utility Deposit

An LHA may use TBRA funds to provide loans or grants for utility deposits. TBRA utility deposits can only be made if the LHA provides an on going HOME funded rental assistance and/or HOME funded security deposit program.

If the LHA pays a utility deposit, the following criteria must be followed:

- a. The family, housing unit, and all other eligibility criteria for assistance must be followed;
- b. Only the prospective tenant may apply for utility deposit assistance.
- c. The LHA must pay the utility deposit directly to the service provider;
- d. TBRA utility deposit assistance is limited to the paying of deposits. At no time is the paying of past or present

- e. utility bills allowed; and
- e. The LHA, upon receiving the return of deposits, must use the funds for the next eligible HOME cost under the guidelines of the program, or return the funds to the KHRC. In the event the funding agreement has expired with the LHA, any returned deposits must be transmitted to the KHRC.

Family Rent to Owner and Rental Assistance Payments

After a *Request for Unit Approval* has been approved, the LHA must prepare the *Rental Assistance Contract* for execution by the owner and the LHA, and execution of the lease between the family and the owner.

The family rent to owner is determined after rental assistance is calculated. Rental assistance shall be the difference between 30 percent of the family's adjusted income and the applicable fair market rent. Family rent to owner is the difference between the rental assistance and the contract rent.

The LHA shall have a minimum tenant payment as approved by the KHRC

Execution of the Rental Assistance Contract and Lease

Once all items with respect to the Rental Assistance Contract has been identified, approved, and appropriately completed, the LHA must execute the Rental Assistance Contract with the owner. No rental assistance will be paid until the contract has been executed.

The LHA must ensure the execution of the lease between the owner and the family.

The LHA must retain a copy of the contract and lease in the family's file.

Rental Assistance Payment Contract Termination

Automatic Rental Assistance Payment Contract Termination. The contract automatically terminates when:

- a. The family vacates the unit in violation of the lease;
- b. The family has moved from their unit according to the lease terms, or secured the owner's permission for an early termination date, and the lease term has

- therefore ended;
- c. The owner has required the family to move according to the lease term, and the lease term has therefore ended;
- d. The owner has evicted the family with LHA authorization;
- e. The owner does not wish to enter into a new contract, or refuses to renew or extend the current one;
- f. The length of assistance provided the family with the existing TBRA grant has reached two years.

LHA-initiated contract termination

Under the following circumstances, the LHA may terminate the contract prior to its regular termination date:

- a. The unit is not in compliance with HQS or other contract requirements, and the owner refuses to correct the deficiencies;
- b. The unit is overcrowded or under occupied due to family composition change which requires the family to move;
- c. The family, at recertification, has been determined ineligible due to their income.
- d. The LHA is unable to approve a new *Request for Unit Approval* where a contract is expiring due to gross rent exceeding FMR;
- e. The LHA has determined that the owner is not in compliance with the terms of the contract;
- f. The LHA has determined that the family is not in compliance with the terms of its rental coupon;
- g. A family has been determined to have abused the program, or to have engaged in fraudulent activities.

The LHA shall complete a *Project Close-out Form* when a family is terminated for any reason from the TBRA program.

Evictions

The TBRA program abides with *24 CFR Part 882.511* that requires specific actions by the owner in order to evict an assisted family and also requires specific determinations to be made by the LHA.

LHA Requirements/Responsibilities

The LHA is responsible for ensuring that TBRA

funds are used in accordance with all program requirements as described in this description and abides with all requirements of *24 CFR Part 92*.

Project Set-up

Upon completion of all requirements of the above, the LHA shall submit a completed *Project Set-up Report* to the KHRC. Upon receipt of the *Project Set-up Report*; the KHRC shall submit the family for participation in the TBRA program through HUD's IDIS system. IDIS will assign an activity number to the project that the KHRC will issue to the LHA.

Payment Request

Upon receiving an activity number for a family, the LHA must submit a *Payment Request Form* to obtain funds for the family's rental assistance.

Payment requests are limited as follows:

- a. Security deposit (See Security Deposit.)
- b. Utility deposit - the deposits of the family consisting of approved utilities as found on the utility allowance form of the LHA.
- c. Rental assistance payment - LHA may request up to a maximum of two months rent or any smaller portion thereof.

Upon receiving the funds, the LHA must disburse the funds within 15 days to the destination of the funds, such as landlords and utility providers. An LHA must return any funds not distributed within the time limit to the KHRC.

An LHA must have *Payment Requests* into the KHRC no later than the 10th of each month for the next month rental assistance payment.

Administration Funds

The LHA shall receive a maximum of five percent (5%) of grant funds expended for the use of administration funds.

The LHA may request administration funds with each *Payment Request*. The LHA must abide with the proper use of administration funds as outlined in *OMB Circular #A-87*.

Record Keeping

The LHA must establish and maintain sufficient records to enable the KHRC to determine whether the LHA has met the requirements of the TBRA program.

Tenant Records

The LHA shall maintain records of each family for five years. The tenant files shall contain, but are not limited to, the following:

- a. Original application with copies of social security cards for each household member;
- b. Income verifications, along with source documentation;
- c. Annual release of information forms;
- d. *Rental coupon, Request for Unit Approval*, and other materials related to coupon issuance;
- e. Completed HQS inspection form for the unit;
- f. Lead based paint disclosure forms to indicate receipt of required pamphlets and required tenant notification forms prior to move-in.
- g. Descriptions of any required paint stabilization activities, clearance reports and required tenant notifications.
- h. Annual adjusted income worksheet and other related documents;
- i. Utility allowance schedule;
- j. *Total Tenant Payment / Total Rent* form;
- k. Rental Assistance Payments Contract and Lease Agreement; and,
- l. *Project Set-up* and *Project Closeout*

Recertification

The LHA shall recertify all families receiving TBRA if one of the following conditions exists:

- a. Annual recertification-all families must be recertified on an annual basis. Annual recertifications shall include income verifications, rent increase, HQS inspection, determination of family status, etc.
- b. Change in household size-the LHA must recertify the family if the household size changes to ensure income compliance of the family and the proper unit size.
- c. Change in family income - the LHA must recertify a family if the family income increases or decreases minimum of \$100.00 per month (\$1,200.00 per year).

Reporting

Quarterly Progress Report-The LHA shall submit *Quarterly Progress Reports* to the KHRC. Reporting periods consists of

Oct/Nov/Dec, Jan/Feb/Mar, Apr/May/June
Jul/Aug/Sep. Reports are due on the 10th
day after the end of each quarter.

Grant Completion Report-the LHA must submit
a Grant Completion Report within 45 days after
the final Payment Request has been paid to the
LHA.

Compliance Monitoring

KHRC staff will monitor the LHA TBRA
program annually according to 24 CFR 92.504
(a).

During the compliance visit HQS inspections of
randomly selected units will occur.
Administrative and financial procedures will be
reviewed and discussed. TBRA tenant files will
be randomly reviewed. A compliance follow-up
report will be mailed to the grantee.

Should the follow-up report include
findings/concerns, the grantee must respond in
writing within thirty days regarding remediation
of the findings and compliance with federal
regulations and KHRC policies and procedures.

HOME Tenant Based Rental Assistance Program

Minimum Requirements – Administrative Plan

Applicants for **HOME Tenant Based Rental Assistance (TBRA)** must submit an Administrative Plan describing the policies to be used in the administration of the TBRA program. A HUD-approved Plan complies with this requirement. If an applicant does not have a Plan, they must develop one as required in the application. Plans must include an “Equal Opportunity Housing Plan”.

Contents of the Administrative Plan

1. Statement of Policies and Objectives
 - a. Fair Housing Policy
 - b. Privacy Rights
 - c. Fair Housing Marketing Plan
2. Duties and History of Staff Positions.
3. Applying for Assistance/Waiting List Procedures:
 - a. Pre-application for waiting list
 - b. Documentation Required for completed application
 - i. Citizenship Form
 - ii. Social Security Card/Birth Certificate
 - iii. Income Release Form(s)
 - iv. Third Party Income Verification(s)
 - v. Documentation for Preferences (Dr. /Therapist Letter, Homeless related etc. if applicable)
 - vi. Medical Receipts (Disabled/Elderly Family only)
 - vii. Bank Receipts (if applicable)
 - c. Income limits and Preferences
 - d. Removal from the waiting list
 - e. Applicant Selection
 - f. Formal application for assistance
 - g. Opening/closing waiting list
4. Rules for special purpose funding
 - a. Security Deposits
 - b. Utility Deposits
5. Outreach Procedures
 - a. Press Release to area media (list)
 - b. Family Outreach
 - c. Owner Outreach
6. Eligibility for Admission
 - d. Family Composition/Definition
 - e. Live-in Aide Requirements
 - f. Income Inclusions/Exclusions
 - g. Denial of Assistance
7. Briefing Session
 - a. Issuing or Denying Issuance
 - b. Initial Term and extension or suspension of the term
8. Occupancy Standard
 - a. Determining bedroom size
 - b. Family absence from unit
 - c. Split households
9. Grievance Procedure
 - a. Informal review for applicant
 - b. Informal hearing for participant
10. Income Determination and Verification Procedures
11. Establishing/Revising Payment Standards
12. Special Housing
 - a. Choice whether to offer special housing types
 - b. Policies on special housing (such as shared housing)
13. Move-in Procedures
 - a. *Request for Unit Approval*
 - b. Inspection – Housing Quality Standards (HQS)
 - c. Lease Approval and Housing Assistance Payment Contract
14. Minimum Rent, Total Tenant Payment, and HAP to Owner Procedures
 - a. HAP to Owner
 - b. Family Rent to Owner
15. Annual and Interim Certification of family income and composition
 - a. Annual Recertification
 - b. Interim Recertification
 - c. Income Release Form Required
16. Complaint Procedures
17. Lead Based Paint Procedures
 - a. Inspection, stabilization, abatement, clearance and relocation procedures
 - b. Quarterly health department report procedures for rental subsidies.
 - c. Tenant sign off documentation procedures to indicate tenant received lead based paint information prior to move in