

**ADMINISTRATIVE PLAN**

**SECTION 8 HOUSING CHOICE VOUCHER PROGRAM**

**HOUSING AUTHORITY OF THE CITY OF ENCINITAS, CA**

**"POLICY HANDBOOK"**

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"POLICY HANDBOOK"

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EXHIBITS

<u>EXHIBIT</u>	<u>TITLE</u>
I	Section 8 Housing Choice Voucher Program (HCV) Informal Review and Hearing Procedures
II	Section 8 Homeownership Family Obligations

**ADMINISTRATIVE PLAN**  
**SECTION 8 HOUSING CHOICE VOUCHER PROGRAM**  
**HOUSING AUTHORITY OF ENCINITAS, CALIFORNIA**

SECTION I. ADMINISTRATIVE POLICY OF THE HOUSING AUTHORITY OF THE CITY OF ENCINITAS DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PROGRAMS (HUD). The Housing Authority Law of the State of California, Health and Safety Code Section 34327.5, provides that the federal agency from which the housing authority receives funds shall have the exclusive power to determine the type, amount and manner of expenditure of those funds so long as those determinations relate to the law or contract under which the funds are received. This Administrative Plan is intended to comply with existing HUD regulations and handbook provisions promulgated under Section 8 of the United States Housing Act of 1937 as amended. Any variation between this Administrative Plan and the rules and regulations of the Department of Housing And Urban Development shall be resolved in favor of the determination made by HUD. Changes in HUD rules regarding the type, amount and manner of expenditure of any funds received from HUD shall be deemed incorporated into this Administrative Plan automatically and staff changes to this Administrative Plan to incorporate such HUD rules shall be deemed to have been authorized by the Housing Authority Board of Commissioners unless expressly repudiated by said Board at its next regular meeting.

It is the intent of this provision to allow staff to comply with HUD rules in order to facilitate the administration of these HUD programs for the best interests of the program recipients with the least amount of administrative disruption and controversy.

Where there is no mandatory federal guidance, PHAs must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the PHA should follow the state law. Where no law or HUD authority exists on a particular subject, industry practice may support Public Housing Authority (PHA) policy. An industry practice is a way of doing things that is followed by most housing authorities.

A. Administrative Fee Reserves

The Encinitas Housing Authority (EHA) Board of Commissioners must approve expenditures of the administrative fee reserve in excess of \$100,000. Such expenditures must be used for other housing purposes, as defined by HUD.

## SECTION II. GENERAL INFORMATION

### A. Definition Of Terms.

1. Agreement for Mutual Recision of Lease. The legal document accomplishing the mutual recision which is signed by both lessor and lessee and states the effective date of the action.
2. Allowance for Utilities. An amount determined by the EHA as an allowance for the cost of utilities (except telephone) and other services paid directly by the Household. Current utility allowances can be found on the City website located at [www.encinitasca.gov](http://www.encinitasca.gov).
3. Annual Contributions Contract ("ACC"). A written agreement between HUD and the EHA to provide annual contribution to the EHA to cover Housing Assistance Payments (HAP) and other expenses pursuant to the Act.
4. Gross Annual Income. The anticipated total annual income of an eligible household from all sources before deductions for the 12-month period following the date of determination of income, computed in accordance with Section VI.
5. Adjusted Gross Income. The annual gross income less:
  - A. \$480.00 for each dependent (see Section II.A.13), and \$400.00 for any Elderly Individual or Family
  - B. Medical expenses (see Section II.A.31) which exceed 3 percent of the annual income, and for any Elderly/Disabled Individual or Family.
  - C. Child care expenses (see Section II.A.8).
6. Applicant. Designates one who has submitted an application for Section 8 HCV assistance. This application does not create an entitlement of any individual to Section 8 HCV assistance.
7. Asset Income. Eligibility/annual income includes the higher of (1) annual income from assets; or (2) if the net Household assets exceed \$5,000, passbook rate set by HUD.
8. Child Care Expenses. Amount anticipated to be paid by the Household for the care of children under 13 years of age during the period of which annual income is computed, but only where such care is necessary to enable a Household member to be gainfully employed or to further his or her education. The amount deducted shall reflect reasonable charges for child care, and, in the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of income received from such employment.
9. Citizenship and Immigration Status. Citizen means a citizen or national of the United States. Evidence of citizenship or eligible immigration status means the

documents which must be submitted to evidence citizenship or eligible immigration status.

10. Contract. See Housing Assistance Payment Contract.
11. Contract Rent. The rent payable to the owner under his contract including the portion of the rent payable by the Household.
12. Continuously Assisted Person. An applicant is continuously assisted under the 1937 Housing Act if the Household is already receiving assistance under any 1937 Housing Act program when the Household is admitted to the voucher program.
13. Dependent. A member of the household (excluding foster children) other than the Family head or spouse, who is under 18 years of age or is an individual with disabilities , or is a full-time student.
14. Disabled Individual. The EHA defines an individual with disabilities in accordance with the Americans with Disabilities Act as amended pursuant to 28 CFR Part 35 §35.104.
15. Displaced by Government Action. An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of:

Activity carried on by an agency or U.S. or by any state or local governmental body or agency in connection with code enforcement or a public improvement or development program.
16. Elderly Individual. An individual who has attained age 62.
17. Extremely Low Income Household. A Household whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger Households.
18. Fair Market Rent. The rent, including utilities (except telephone, cable), ranges and refrigerators, and all maintenance, management and other services, which as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate fair market rents (FMR) shall be established for dwelling units of varying sizes (number of bedrooms).
19. Family. The term “family” includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:
  1. A “family” may be a single person or two or more persons who share residency and whose combined income and resources are used to determine financial eligibility.
  2. A “family” includes a household with or without a child or children.

3. A "family" may be a group of persons consisting of two or more elderly persons or disabled persons living together, or one or more elderly or disabled persons living with one or more live-in aides.
4. A "family" may be a single person.
5. A single person may be:
  - a. an elderly person;
  - b. a displaced person;
  - c. a disabled person; or
  - d. any other single person, such as the remaining member of an assisted family.
6. Elderly Family. A Family as defined above with a head of household who has attained age 62.
7. Disabled Family. A Family as defined above with a head of household that is a disabled individual. (see Section II.A.14) It may include two or more elderly or disabled persons living together or one or more such persons living with any other person who is determined to be essential to their care or well-being.
8. The definition of "Family" does not exclude a person living alone during the temporary<sup>1</sup> absence of a Family member who will later live regularly as a part of the Family.
9. A person necessarily residing with a Family by reason of employment by or for such a Family (1) to permit the employment of a sole wage earner, or (2) for the health and welfare of a sick or incapacitated member of the Family, shall be considered as a member of the Family for the purpose of determining Family income or established rent, providing that (1) such person maintains no other home; (2) his or her income is available to the Family; and (3) if the person is expected to contribute towards the Family's support. In such cases, only that part of the income which is over and above wages paid by the Family shall be included. Conversely, if the person is not expected to and does not, therefore, contribute to the Family's support, his or her income should not be counted. However, the head of the household must then submit a doctor's certificate or such other certificate as may be deemed necessary stating that his employment is necessary to the care and well-being of the sick or incapacitated Family member, or to enable another Family member to seek or obtain employment outside the home. If the Family pays out-of-pocket for the care provided, such payments may be deducted as unusual medical expenses (see Section II.A.31). Under no circumstances will such an arrangement be continued longer than necessary or permitted only for the convenience of the tenant or such employee. This provision is applicable both for initial occupancy and continued participation and is not restricted to Elderly Families.

20. Full-Time Student. A person who is carrying a subject load that is considered full time for day students under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

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<sup>1</sup> The term, temporarily or temporary as used in this section, is defined as a period of 6 months or less.

21. Gross Rent. The total monthly cost of housing an eligible Household, which is the same of the contract rent and any utility allowance for the assisted unit. In the case of rental of only a manufactured home space, gross rent also includes the Household's monthly payment to amortize the purchase price of the manufactured home.
22. Hard to House Family. Families who experience difficulty renting appropriate housing.
23. Head of Household. The "head of a Household" is that member actually looked to and held accountable for the Household's needs.
24. Homeless Family. A family which is without housing, or residents of a recognized homeless shelter or transitional housing facility, through no fault of their own.
25. Homeless Individual. An individual who is without housing, or resident of a recognized homeless shelter or transitional housing facility, through no fault of their own.
26. Housing Assistance Payments Contract ("Contract"). A written contract between EHA and an owner on behalf of an eligible Household.
27. Household. Refers to the person/s that reside within a residential unit. The policies herein that affect "households" include applicants and participants.
28. HUD. The United States Department of Housing and Urban Development or its designee.
29. Lease. A written agreement between an owner and an eligible Household for the leasing of an existing housing unit in accordance with the contract, which agreement is in compliance with the provisions of this part.
30. Lower-Income Household. A Household whose annual income is between 50% and 80% of the median income for the area, as determined by HUD with adjustments for smaller and larger households. HUD may establish income limits higher or lower than 80% of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low household incomes.
31. Medical Expenses. Those medical expenses for Elderly/Disabled households which are to be anticipated during the 12-month period for which the annual income is computed, and which are not covered by insurance; however, premiums for such insurance may be included as medical expenses.
32. Mutual Rescission. When the lessor and lessee agree to completely rescind and release each other from further responsibility in accordance with any executed lease.
33. Mutual Rescission With Continued Eligibility. A mutual rescission where the lessee is reissued their Voucher for the use on another approval unit.

34. Mutual Recision Without Continued Eligibility. A mutual recision where the lessee is not reissued their Voucher for use on another approved unit.
35. Net Household Assets. Value of equity in savings, checking, IRA and Keogh accounts, real property, stocks, bonds and other forms of capital investment. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income.
36. Owner. Any person or entity, such as a cooperative or HUD, having the legal right to lease or sublease existing housing.
37. Participant. A Household becomes a participant when the EHA executes a contract with an owner for housing assistance payments on behalf of the Household.
38. Payment Standard. The amount of the monthly maximum subsidy payment on behalf of an eligible Household based on unit size.
39. Portability. Renting a dwelling unit with Section 8 HCV tenant based assistance outside the jurisdiction of the initial housing authority.
40. Remaining Member of a Tenant Household. A Person left in an assisted unit who may or may not normally qualify for assistance on their own circumstances (for example, a widow, age 47, that is neither disabled nor elderly).
41. Resident. For the purpose of determining eligibility and applying preference, a resident Household is one who is currently living in the City of Encinitas, or whose head of household or spouse is employed in the City of Encinitas or who has accepted employment in the City of Encinitas which will become effective within 14 days from the date of application. For homeless persons to meet residency test, applicant must prove that they normally stay within the City of Encinitas. Examples of acceptable documentation include: letter from a social services agency verifying that the applicant is homeless in Encinitas, or verification from the Encinitas Sheriffs' department.
42. Subsidy Standards. Standards to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.
43. Suspension. Stop of the clock on the term of a voucher for the period of time necessary for the EHA to approve/disapprove a request for lease approval.
44. Tenant Rent. (Formerly called Net Family Contribution). The amount payable monthly by the Household as rent to the owner minus any utilities. Where all utilities (except telephone) and other essential housing services are supplied by

the owner, tenant rent equals Total Tenant Payment. Where some or all utilities (except telephone) and other essential housing services are not supplied by the owner and the cost thereof is not included in the amount as rent to the owner, tenant rent equals Total Tenant Payment less the utility allowance.

In the case of a Household renting only a manufactured home space, tenant rent equals the space rental minus the housing assistance payment, as defined in the applicable Section 8 HCV program regulation.

45. Total Tenant Payment. (Formerly called Gross Family Contribution). The portion of rent the Household is obligated to pay toward the contract rent. This amount will be reduced by any allowance for tenant paid utilities and services.
46. Utility Allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the Household occupying the unit, an amount equal to the estimate made or approved by EHA or HUD under applicable sections of the regulations (see 24 CFR §§ 880, 881, 882, 883, 884 and 886) of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.
47. Utility Reimbursement. In the voucher program, the amount, if any, by which the utility allowance for the unit, if applicable, exceeds the Total Tenant Payment for the Household occupying the unit.
48. Very Low-Income Household. A lower income Household whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger Households. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low Household incomes.
49. Veteran. For the purpose of determining eligibility and applying preference, a Veteran is a head of household or spouse who has discharged from military service under honorable or general conditions (with the exception of dishonorable), or a spouse of a deceased veteran.
50. Violent Criminal Activity. Any illegal criminal activity that has as one of its elements the use, attempted use or threatened use of physical force against another person or property of another.
51. Voucher Contract. A written contract between the EHA and owner whereby the EHA makes voucher payments to the owner on behalf of an eligible Household.
52. Voucher. A document issued by the EHA declaring a Household to be eligible for participation in the Voucher Program and stating certain terms and conditions of participation.

53. Voucher Payment. Housing assistance payments made to owners on behalf of eligible households.
54. Working. To be eligible for the working priority, a head of household must be engaged in gainful employment averaging a minimum of fifteen (15) hours per week or seven hundred eighty (780) hours per year. Documentation will be required to receive credit for this priority.

### SECTION III. CONDITIONS GOVERNING ELIGIBILITY

A. Eligibility for Participation. To participate in the Section 8 HCV program only those applicants are eligible:

1. Whose Eligibility Income (see Section VI), does not exceed the applicable income limit for participation as established by HUD . Current income limits can be found on the City website located at [www.encinitasca.gov](http://www.encinitasca.gov). Except with the prior approval of HUD, no Household other than a Very Low-Income Household shall be approved for admission.

The applicable income limit for voucher issuance is the income limit for the EHA jurisdiction. The applicable income limit for admission (initial lease up) is the income limit for the location where the Household actually leases the unit.

2. Who do not have an outstanding validated claim for rent and/or damages owed to a Public Housing Authority (PHA) or Owner relative to previous participation in a housing program administered by a PHA.

B. Eligibility for Continued Participation. To continue participation in the Section 8 HCV program administered by the EHA, only those occupants are eligible:

1. Who qualify as the remaining member of an assisted Household:
  - a. In the event a participant Household separates, the Voucher for continued participation shall stay with the members of the household who continue to meet an EHA priority and/or stay in the Household's existing residence. An additional voucher can not be expected to be issued to accomodate a separated Household.
2. Whose monthly Total Tenant Payment (see Section II.A.45) is less than the gross rent as paid to the owner for the unit occupied.
3. Who follow the requirements of the program (see Section XV).

## SECTION IV. APPLICATIONS AND WAITING LISTS

### A. Public Notice to Lower-Income Families.

1. Upon opening the wait list, this EHA shall make known to the public through publication in a newspaper of general circulation, as well as through minority media and other suitable means, the initial availability and nature of housing assistance for Very-Low Income Families. (See Equal Housing Opportunity Plan)

### B. Receipt of Applications.

1. Applications which are in compliance with the EHA advertisement are to be accepted from all households apparently eligible for the issuance of a Voucher. This rule is to hold unless the number of applicants with the maximum preference points on the waiting list for Vouchers is such that there is no reasonable prospect that additional applicants could be issued Vouchers within a time deemed reasonable by staff. In such case, application taking will be temporarily suspended. The suspension of application taking will be publicly announced by publication of a notice in the media as specified in Paragraph A above. The announcement will be utilized prior to the resumption of application taking.
2. Each application shall reflect the date and time received, and shall be processed as set forth in Section III.
3. The EHA must maintain records of applicants and participants which provide HUD with data on race, gender and ethnicity.

### C. Establishment of a Waiting List. The EHA shall maintain a waiting list of potentially eligible applicant Households.

1. Each potentially eligible applicant shall be placed on the list and the file (or appropriate type of control records) maintained in a manner so as to assure compliance with the policies of selection set forth in Section V. Submission of an application does not create an entitlement of any individual to Section 8 HCV assistance.

### D. Denial of Admission. The EHA may refuse to issue a Voucher to an applicant or participant if:

1. The applicant or any member of his/her household has a documented history of destruction and abuse of property.
2. The applicant or any member of his/her household has a history of criminal activity involving crimes of physical violence to persons or property.
3. The applicant or any member of his/her household has engaged in drug-related criminal activity or violent criminal activity as defined in 24 CFR § 982.553, or which could discredit the Housing Assistance Payments (HAP) Program.

4. The EHA has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
5. The EHA has reasonable cause to believe that abuse or a pattern of abuse of alcohol by a household member may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
6. Any household member has ever been convicted of drug-related criminal activity for the manufacturing or production of methamphetamine on the premises of federally assisted housing.
7. A member of the family engaged in illegal drug-related activity during the past five years that involved: sales, transportation, manufacturing or possession for sale.
8. A member of the family engaged in violent criminal activity during the past five years. Violent criminal activity is any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be likely to cause, serious bodily injury or property damage.
9. The applicant or any member of his/her household currently owes rent or other amounts to the EHA or to another PHA in connection with Section 8 HCV, Public Housing Assistance under the 1937 Housing Act or any other program administered by the EHA.
10. As a previous participant in the Section 8 HCV program, or as participant in any EHA program, has not reimbursed the EHA or another PHA for any amounts paid to an owner under a housing assistance contract for rent or other amounts owed by the Household under its lease, or for a vacated unit.
11. Has violated any Family Obligations as a participant in any of the EHA's assisted housing programs.
12. Breaches or has breached a repayment agreement with the EHA.
13. Any family member has committed fraud in connection with any federal housing assistance program.
14. If any member of the household is subject to a lifetime registration requirement under a State Sex Offender Registration program.
15. If the household has engaged in or threatened abusive or violent behavior towards EHA personnel.

E. Removal from Waiting List.

The EHA may remove an applicant from the waiting list for a failure to respond to requests for information or updates or refusal of assistance under the Voucher program. The EHA updates the waiting list periodically, purging those applicants who do not respond or are no longer interested.

F. Notice to Families Determined to be Ineligible

If an applicant is determined to be ineligible on the basis of income, Household composition or for any other reason, the applicant shall be notified promptly by letter of the determination and their reasons therefore. The applicant shall be informed in the letter of their right to an informal review, if requested within 10 days from the date of the letter, to make written or oral objections to the EHA determination. This review will be conducted by someone other than the person who made the initial determination. If, after the review, the applicant is still determined to be ineligible, the applicant shall be notified in writing, including a brief statement of the reasons for the final decision. The EHA shall retain for three years a copy of the application, notice to the applicant, and the applicant's responses.

G. Notice to Families Determined to be Eligible

When a Voucher is available, the next Household on the waiting list shall be notified in writing, advising its members to contact the Housing Authority office of said availability, and giving them no less than seven (7) calendar days to schedule an appointment to complete an application, provide required verifications and attend a briefing on the Section 8 HCV program and issuance of a Voucher. In the event the Household members fail to respond within the prescribed time or fail to keep their appointment for the completion of an application, fail to provide required verification within the time prescribed or fails to attend the briefing session, the application shall be canceled, and the reason for cancellation noted on the face of the application, including the date of cancellation, and the initials of the EHA staff person canceling the application. In the event the Household fails to keep any of its scheduled appointments with good cause, at the discretion of the Section 8 HCV Program Supervisor, the Household members may be given the option to schedule a 2nd appointment as long as it occurs prior to the next issuance of Vouchers.

H. Merger and Cross Listing.

The Housing Authority will merge the EHA tenant-based waiting list with other assisted housing programs including federal or local programs. HUD program requirements still apply to each separate housing program.

I. Cooperative Waiting List.

The EHA, the Housing Authority of the County of San Diego, the City of San Diego Housing Commission, the cities of Oceanside and Carlsbad, agree to maintain a cooperative waiting list for those applicants who live in the jurisdiction of the other housing agency.

Each housing agency will exchange waiting list applications (preserving the original time and date of application for applicants residing in the jurisdiction of the other agency) provided that the Housing agency had an open waiting list during that time period, or provide the earliest date available to the applicant.

Upon receipt of this data, each housing agency will place such applicants into their current waiting list using the original time and date of application.

SECTION V. SELECTION OF FAMILIES FOR ISSUANCE OF VOUCHERS.

- A. Governing Conditions. Among eligible applicants, selection for the issuance of Vouchers shall be made without regard to race, color, , religion, sex, disability,, familial status, or national or ethnic origin; and on the basis of the priorities as set forth in Section V.B and V.C.
- B. Order of Preference in the Selection of Families to be Issued a Voucher. Each of the preferences shall carry a point value, and all applications shall be ranked by the highest number of points being given highest priority in the waiting list.
1. Types of Preferences.
- (a). Local Preference: resident of or employed in the City of Encinitas. (50 points) (Section II.A.41 and A.54)
- (b). Priorities: applicants with any one or combination of the priorities listed below. (50 points)
- Elderly individual or family,
  - Disabled individual or family,
  - Families with dependent children where a head of household works and/or attends school/a training program,
  - Homeless individual or family,
  - Involuntarily displaced individual or family due to Government action, or
  - Veteran. (Section II.A.49)
- (c). Date/Time: date/time of applications shall be utilized to sort applicants within the same point category,
- (d). In order to meet HUD income targeting requirements, the EHA may select persons off the waiting list who are at or below the extremely low income level.
2. Section 8 HCV applicants receiving tenant based HOME subsidies retain the date of original application for the Section 8 HCV waiting List.
- C. Time and Date Sequence of Applications. In the event that two or more eligible applicant Families requiring the same unit size have identical preference or priority status, the date and time sequence of applications shall govern selection with the applicant who filed the earliest application shall be issued a Voucher first (subject to the provisions contained in Section V.B.1 and B.2).

SECTION VI. DETERMINATION OF INCOME FOR ELIGIBILITY AND TOTAL TENANT PAYMENT. This section sets forth the policies and procedures for determining Income for Eligibility, and the Total Tenant Payment (Rent) for Eligible Households. These policies and procedures shall be applicable in making such determinations for purposes of initial occupancy as well as in connection with periodic or interim reexaminations of Household income, composition and the extent of medical or child care expenses.

- A. Procedure for Determination of Income for Eligibility. For purposes of determining if a Household is a Very Low-Income Household, its income shall be determined in accordance with Section VI.B.1 and B.2, except that where a Household has net Household assets in excess of \$5,000, its income shall include the actual amount of income, if any, derived from all the net Household assets or the current passbook rate as established by the U.S. Department of HUD of the value of such assets, whichever is greater. For purposes of this determination, Net Household Asset means value of equity in real property, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded.
- B. Annual Income Sources and Computation. Annual income shall include all payments from all sources received or anticipated to be received during the twelve months following initial occupancy or redetermination of Household income<sup>2</sup> by (1) the head of the household and spouse, and (2) each additional member residing in the household who is at least eighteen years of age. Annual income shall include that of the head of the household or spouse temporarily absent which, in the determination of the EHA is (or shall be) available to meet the Household's needs. Excluded in the computation of annual income shall be (1) temporary, non-recurring or sporadic income.
1. Income Sources shall include, but not be limited to:
- (a). The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal service.
  - (b). The net income from operation of a business or profession or from rental of real or personal property (for this purpose, expenditures for business expansion or amortization of capital indebtedness and an allowance for depreciation of capital assets shall not be deducted to determine the net income from a business).
  - (c). Interests, dividends, and net income of any kind from real or personal property. When the applicant's total assets exceed \$5,000, the EHA shall calculate the dollar amount included in the Household's annual income which is specifically derived from assets. In addition, if assets are greater than \$5,000, annual income shall include the greater of the actual income

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<sup>2</sup> In making the estimate, due consideration should be given to past recipients of income. Arbitrary assumptions or imputation of income of periodic receipts shall be avoided, including a lump-sum payment for the delayed start of a periodic payment. Benefits paid on behalf of a child are considered as income accruing to the parent.

derived from all Net Household Assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD.

- (d). The full amount of periodic payments received from Social Security, pensions, retirement funds, annuities, insurance policies, disability or death benefits and other similar types.
- (e). Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay (but see Section VI.B.2(c)).
- (f). Public Assistance, such as AFDC, SSI, and General Relief income shall include the amount of the allowance specifically designated for shelter and utilities plus the allowance paid directly to the recipient.
- (g). Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling. Child support is considered as income accruing to the parent.
- (h). All regular pay, special pay and allowances of a member of the Armed Forces, except hazardous duty pay while away from home and exposed to hostile fire, whether or not living in the dwelling, who is head of the Household or spouse; or other person whose dependents are residing in the unit.
- (i). The amount of educational scholarships, benefits, or grants paid to the student or educational institution which are available for or used for subsistence purposes (see Section VI.B.2(d)).
- (j). Any earned income of household members - age 18 or older. (Exception: earnings in excess of \$480 for dependents over age 18 who are full-time students)

2. Temporary, Non-Recurring or Sporadic Income Not Included in the Computation of Annual Income:

- (a). Casual, sporadic or irregular gifts.
- (b). Amounts which are specifically for or in reimbursement of the cost of medical expenses.
- (c). Lump-sum additions to Household assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers compensation), capital gains and settlement for personal or property losses, or for the delayed start of Social Security or SSI benefits. Such sums, however, may be included as assets in the determination of income for eligibility.

- (d). Amounts of educational scholarships paid directly to the student or to the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment. Any amounts of such scholarships, or payments to veterans, not used for the above purposes or which are available for subsistence are to included in income.
- (e). Student Loans, regardless of what the loan is used for.
- (f). The special pay to a serviceman head of Household away from home and exposed to hostile fire.
- (g). Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
- (h). Foster child care payments.
- (i). The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977.
- (j). Payments received pursuant to participation in the following volunteer programs under the ACTION Agency:
  - (1). National Volunteer Anti-Poverty Programs which include VISTA, Service Learning Programs and Special Volunteer Programs.
  - (2). National Older American Volunteer Programs for persons aged 60 and over which include Retired Senior Volunteer Programs, Foster Grandparent Programs, Older American Community Service Programs and National Volunteer Programs to assist Small Business Experience, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).
  - (3). Payments to under the Domestic Volunteer Services Act of 1973.
  - (4). Payments received under the Alaska Native Claims Settlement Act.
  - (5). Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes.
  - (6). Payments or allowances made under the Department of Health and Human Services' Low-Income Energy Assistance Program.
  - (7). Payments received from the Job Training Partnership Act.
  - (8). Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

(9). The first \$2,000 of per capita shares received from judgement funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

(10). Subsidy allowance to recipients of SSI, in lieu of food stamps.

3. Disallowance of Earned Income for Persons with Disabilities. The EHA will apply the regulation according to 24 CFR 5.617; 982.201(b)(3). The annual income for qualified families may not be increased as a result of increases in earned income of a family member who is a person with disabilities beginning on the date on which the increase in earned income begins and continuing for a cumulative twelve-month period. After the disabled family member receives twelve cumulative months of the full exclusion, annual income will include a phase-in of half the earned income excluded from annual income.

C. Total Tenant Payment. Each eligible Household's Total Tenant Payment shall be either the greater of 30 percent of net income after allowable deductions or 10 percent of gross income, with a minimum rent of \$50.00.

Allowable Deductions:

1. \$480 for each dependent (excluding head of household or spouse).
2. Medical expenses which exceed 3% of the annual income for Elderly/ Disabled Households.
3. \$400 household allowance for each elderly or disabled household.
4. Child care expenses: Amounts paid by the Household for the care of minors under 13 years of age or for the care of disabled Household members, but only where such care is necessary to enable a Household member to be gainfully employed, or to further his or her education, and the amount allowable as child care expenses shall not exceed the amount of income from such employment. Verification of child care expenses must be provided on a Housing Authority form, including name, address, social security number and a copy of the license of the child care provider must be included in the form. Also, if the Household is entitled to file for federal and state income tax, the amount claimed through the Housing Authority for child care must be reflected in the State and Federal Tax claim for the appropriate year, if the Household is eligible for a tax deduction for said child care. In the event the child care expenses are in part or whole paid for or reimbursed to the Household by any other government agency, the amount paid for or reimbursed to the Household shall not be counted as a deduction in the calculation of tenant rent.

SECTION VII. DETERMINATION OF ELIGIBILITY FOR ISSUANCE OF VOUCHERS. This section sets forth the basic steps which are to be taken in obtaining and verifying information from applicant Households for the purposes of (1) determining whether they meet the conditions of eligibility for participation as set forth in Section III; (2) applying the priority and preference requirements established in Section V; (3) determining the size of dwelling required in accordance with Section VIII; and (4) determining the tenant portion of the rent in accordance with Section VI.

A. Verification of Eligibility.

1. Verification of Citizenship/Eligible Immigration Status. The EHA will apply the regulation according to 24 CFR 5.508, 5.510, 5.512, 5.514. To be eligible for assistance, individuals must be U.S. citizens or eligible immigrants. Individuals who are neither may elect not to contend their status. Eligible immigrants must fall into one of the categories specified by the regulations and must have their status verified by the Immigration and Naturalization Service (INS). Each Household member must declare their status once. Assistance cannot be delayed, denied, or terminated while the verification of status is pending except that assistance to the applicants may be delayed while the EHA hearing is pending.
2. Failure to Provide. If an applicant or participant Household member fails to sign the required declarations and consent forms or provide the required documents, they will be listed as an ineligible member. If the entire Household fails to provide and sign as required, the Household's assistance may be denied or terminated.
3. If the EHA determines that a Household member has knowingly permitted another individual who is not eligible for assistance to reside permanently in the Household's unit, the Household's assistance will be terminated for 24 months, unless the ineligible individual has already been considered in prorating the Household's assistance.

B. Procedure Governing Determination of Eligibility

1. Before issuance of the Voucher by the EHA, the applicant will be interviewed by a staff member who will complete the Certification of Tenant Eligibility (HUD 50058). The applicant must submit verification of all information requested to assure that the data upon which determination of eligibility, priority and preference status, size of dwelling and Total Tenant Payment (rent) are full, true, and complete.
2. This Certification of Tenant Eligibility (HUD 50058) constitutes the basic record of each applicant Household and together with all other materials relating to the Household's eligibility and preference rating, etc. is to be maintained in a file for each applicant.
3. If, during the application process it is determined that the applicant is not eligible, the applicant is to be so informed in writing and classified as ineligible (see Section IV.F). In such instances, sufficient information to establish the fact is to

be attached to the application which is to be maintained for at least three (3) years.

4. All entries on the application of applicant history are to be made in ink, indelible pencil, or typed in. Corrections or changes are to be made by lining through the original entry and entering the correct data. Such changes are to be dated and initialed by the person recording the change and the reason and authority for such changes noted in the record.
5. The applicant is to review and sign the application.

C. Verification and Documentation of Application Data

1. Verifications will be required for information submitted by an applicant to assure accuracy in determining eligibility, and priority, preference status, rent to be paid, and size of dwelling required. Verifications must be current (no more than 60 days old for new leases, no more than 120 days old for annual reexaminations). The EHA will provide forms to applicants to assure receipt of required information.
2. Verification Methods: The following methods of verification are acceptable for the tenant file to be properly documented. In order of acceptability they are:
  - a) Third party - Written (provided directly to the EHA by the source and not hand-carried by the family) or oral (direct contact by EHA with a reliable source).
  - b) Review of documents - Documents provided by household (e.g. pay stubs, bank statements, social security award letters, computerized printouts).
  - c) Household certification or notarized statement - Written statement signed by the family certifying that the information provided is complete and correct.
    - When the preferred verification form is not received in a timely fashion and staff uses the second or third alternative, staff shall record in the tenant file the reason an alternative method was used.
    - If obtaining a third party verification will impose a financial burden on the participant, the EHA may use the second or third alternative.
3. The EHA should verify and maintain documentation in case files pertaining to:
  - a) Household income (including expenses for self employment income)
  - b) Asset information
  - c) Eligible household deductions
  - d) Family size and status
  - e) Verification of local preferences
  - f) Verification of residency in the City of Encinitas (see Section II.A.41).
  - g) Documentation for status of citizenship / immigration (see Section II.A.9).
  - h) Criminal history

D. Summary of Verification Data

1. Verification data is to be reviewed and evaluated as received for completeness, accuracy, and conclusiveness. Where the information received is not completely adequate in all respects, follow-ups or new efforts to obtain such information are to be made and carried through to conclusion. If during the verification process, it becomes evident that for one or more reasons an applicant is ineligible, the investigation is to be discontinued and the applicant promptly notified in writing of their ineligibility and the reasons therefore (see Section IV.F). The EHA is required to offer the applicant the opportunity to present objections to a EHA decision denying assistance to the applicant. However, the regulation provides that the informal review requirements for applicants does not apply to the following types of determinations, which are properly left to the administrative discretion of the EHA, or which are controlled by applicable program requirements:
  - (a). To review discretionary administrative determinations by the EHA, or to consider general policy issues or class grievances.
  - (b). To review the EHA's determination of the number of bedrooms entered on the Voucher under the EHA's unit size standard.
  - (c). To review the EHA's determination that a unit located by a Voucher holder does not comply with the Housing Quality Standards (HQS), or the EHA's determination not to approve the lease for the unit.
  - (d). To review the EHA's decision not to approve a request by a Voucher holder for an extension of the term of the Voucher.

When verification of all necessary items for each application is completed, the Certification of Tenant Eligibility (HUD-50058) is to be completed and signed by the staff member completing the form. This form, along with documentation of verification shall be retained for HUD audit or inspection in a file for each application or assisted Household.

SECTION VIII. SUBSIDY STANDARDS FOR ISSUANCE OF VOUCHERS. Prior to issuing the Voucher, the appropriate dwelling unit size for the Household will be determined by applying the following criteria:

- A. One bedroom is assigned for the head of household (including spouse or significant other, if applicable) and another bedroom is assigned for each additional two persons residing in the household, regardless of gender, age, or relationship.
- B. Every Household member regardless of age is to be counted as a person. A pregnant woman will be counted as two persons. The Household may rent a smaller bedroom size unit provided the unit meets the standards of acceptability, i.e., "...at least one sleeping room or living/sleeping room of appropriate size for each two persons."
- C. Any live-in aide approved by EHA to reside in the unit is counted in determining unit size.
- D. A Household unit size for any Household consisting of a single person must be zero or one-bedroom unit unless a live-in aide resides with the Household.
- E. The EHA must approve composition of the resident Household at admission and must also approve later changes in Household composition. The Household must request EHA approval to add any Household member as an occupant of the unit (exception is newborn, adoption or court-awarded custody of a child). EHA must approve addition of a foster child or live-in aide.
- F. A child who is temporarily away from the home because of placement in foster care is considered a member of the household in determining the family's unit size.

## SECTION IX. ISSUANCE OF VOUCHER.

### A. Procedure Governing Issuance of Voucher.

1. After a Household has been determined to be eligible and is selected for participation, a Voucher shall be prepared and signed by a designated staff member. The Voucher shall state the number of bedrooms approved for the Household (see Subsidy Standard, Section VIII); and the Total Tenant Payment (see Section VI.C).
2. The Voucher, along with a Voucher holder's packet, shall be presented to the Household at a briefing session which the Household will be required to attend. The staff person conducting the briefing program will explain the program in detail and answer any questions the Voucher holder may have. Each Voucher holder's packet shall include the following:
  - (a) Request for Lease Approval (HUD 52517);
  - (b) The EHA's statement of housing quality standards and the forms for inspection for dwelling units.
  - (c) Information regarding lead based paint, poisoning hazards, symptoms, and precautions;
  - (d) "Fair Housing U.S.A." (HUD-63-EO(6));
  - (e) Information on the tenant rent, the housing assistance payment, and the payment standard or Fair Market Rent.
  - (f) The EHA's schedule of Allowance for Utilities and Other Services;
  - (g) Housing Discrimination Complaint Form (HUD-903);
  - (h) Information on the EHA's procedure for conducting informal hearings for participants. This information shall contain a general description of the procedures for conducting informal hearings for participants in the EHA program; including a description of the circumstances in which the EHA is required to provide the opportunity for an informal hearing and how to request a hearing.
  - (i) Information on the term of the voucher and the EHA policy on extensions.
  - (j) Information on what the Household should consider in deciding to lease a unit.
  - (k) Information as to where the Household may lease a unit including portability procedures.
  - (l) A statement about the EHA's policy on providing information about a Household to prospective owners.

- (m) HUD brochure on selecting a unit.
  - (n) If the Household includes a disabled person, the Household may request current listings of accessible units.
  - (o) A list of the Household's obligations under the Program.
  - (p) A copy of the policy regarding the grounds on which the EHA may terminate assistance.
  - (q) A copy of the Subsidy Standards.
  - (r) A copy of the Lease Addendum (HUD 52647.3 for Vouchers).
  - (s) Such other items as the EHA may determine should be included.
3. The briefing session shall provide a full explanation and time for discussion of the following:
- (a) A description of how the program works, including portability.
  - (b) Household and owner responsibilities under the lease and contract;
  - (c) How to find a suitable unit;
  - (d) The general locations and characteristics of the full range of neighborhoods in which the EHA is able to execute contracts. The units may be inside and outside the jurisdiction, including areas that do not have a high concentration of low income families.
  - (e) Applicable housing quality standards and procedures for Household and owner inspections and for their individual certifications of compliance with those standards;
  - (f) Significant aspects of applicable state and local laws;
  - (g) Significant aspects of federal, state and local Fair Housing laws;
  - (h) Applicable Fair Market Rent, determination of Total Tenant Payment, establishment of housing assistance payments;
  - (i) Information regarding applicable regulations pertaining to the portability of the Voucher;
  - (j) That the Household may obtain copies of the Housing Quality Standards, the contract and other pertinent forms on request; and
  - (k) That the EHA will not be responsible for any damage caused by pets.

B. Expiration and Extension of Voucher.

1. The Voucher shall expire at the end of 60 days unless within that time the Household submits a Request for Lease Approval.
2. If a voucher expires or is about to expire, a Household may submit a request for an extension to the EHA. As part of the extension request, the household shall document in writing the efforts it has made to find a suitable dwelling unit and the problems it has encountered. If the EHA believes that there is a reasonable possibility that the Household may, with additional advice or assistance, find a suitable unit, the EHA may grant one or two extensions of 30 days not to exceed a total of 60 days. The maximum amount of time a Household may hold a voucher is a total of 120 calendar days from the beginning of the initial term. If a member of the Household is a disabled person, and the Household needs an extension because of the disability, the EHA may grant an additional extension of 60 days as a reasonable accommodation. Expiration of a Voucher shall not preclude the Household from reapplying to the Section 8 HCV waiting list

C. Suspension. The timeline for the voucher expiration date may be suspended for the period of time necessary for the EHA to approve/disapprove a request for lease approval.

D. Payment Standard. The EHA will review the voucher payment standard as needed to ensure effective utilization of vouchers. The EHA will take into consideration available funding, and the prevailing fair market rents (FMR) in the community for decent, safe and sanitary housing. The EHA may establish the payment standard amount from 90 to 110 percent of the published FMR for each unit size. The Board has authorized the Executive Director and/ or their designee to approve changes to the payment standard based on the annual HUD determination of the Fair Market Rent.

## SECTION X. HOLDERS OF VOUCHERS.

### A. Finders Keepers Policy/Where the Household Can Live.

1. Each holder of a Voucher shall be responsible for finding an existing housing unit suitable to the holder's needs and desires, within the area of jurisdiction of the Housing Authority, or as authorized under the portability regulations.
2. A holder of a Voucher may keep the dwelling unit that the holder already occupies, if the unit meets HUD requirements.
3. Holder may select any eligible unit, including a HUD owned unit. However, a Household may not receive tenant based assistance for housing currently assisted by state or local rent subsidy. This does not include reduced rent from tax credits. The EHA must inform the Household both orally and in writing that the Household has the right to select any eligible dwelling unit and an EHA owned unit is freely selected by the Household without EHA pressure or steering.
4. Ineligible housing units are:
  - public housing;
  - those that receive project based Section 8;
  - board and care homes;
  - college or other school dormitories;
  - those located on penal, reformatory, medical, mental or similar institutions; or
  - those occupied by its owner or by a person with any interest in the dwelling unit.

B. Assistance of Public Housing Authority. This EHA will provide assistance in finding a unit for those Households who, because of age, disability, or other reasons, are unable to locate approvable units. Assistance will also be provided in finding a unit for any Household which alleges that discrimination is preventing it from locating a suitable unit.

### C. Household Moves.

1. The EHA may deny eligibility to those participants who have violated their lease under the existing Section 8 HCV program.
2. If an assisted Household wishes to move, in accordance with the lease provisions, the Household must obtain approval from the EHA. The EHA shall issue another voucher or process a Request for Lease Approval, if the recertification is completed and the Household meets the following criteria:
  - (a). The Household has no unmet financial obligations to the EHA or any other Housing Authority.
  - (b). The Household has not violated its Voucher of Participation in the Section 8 HCV program.

- (c). The Household has not moved during the past year. The Executive Director can make an exception to this rule on a case-by-case basis for good cause.
  - (d). The assisted lease for the old unit has terminated because of the EHA terminating the HAP contract for the owner's breach, or the lease was terminated by mutual agreement of the owner and the tenant.
  - (e). The owner has given the tenant notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgement or other process allowing the owner to evict the tenant.
  - (f). The tenant has given notice of lease termination.
  - (g). The Household is in compliance with the terms of the lease.
  - (h). The Household continues to be eligible for housing assistance.
  - (i). Sufficient funds are available under the ACC.
3. A Household shall not be eligible for another Voucher if it was evicted from an assisted unit in accordance with local law and the provisions of the contract, unless the Household has satisfied any liability to the owner and/or the EHA.
  4. The EHA may refuse to issue a Voucher to a Household wishing to move to another assisted unit if the EHA has determined that any member of the Household has been involved in drug-related or other criminal activity, as defined in the Code of Federal Regulations.
  5. The EHA may refuse to issue a Voucher to a Household at the time of recertification or move out, if it has been determined by a EHA conducted pre-move out inspection of the dwelling unit that abuse of the property through participant negligence exists over and above normal wear and tear.
  6. The EHA may allow a Household to receive another Voucher on a conditional basis for the purpose of moving to a new unit with continued assistance, if the Household meets the criteria outlined in Section X.C.2 above.

D. Portability.

1. A Household may move to any jurisdiction of a housing authority administering the Section 8 HCV program in the United States after the initial year of admission to the Program. The EHA could allow exceptions on a case by case basis for cause, such as a change of work location, change in family status, or an illness or death in the family that requires a move.
2. The EHA will accept certification from the "initial housing authority" unless there are changes in income or Household composition. The "initial housing authority" determines whether the Household is income eligible in the area where the Household wants to rent.

3. If a Household is requesting to move to the jurisdiction of another housing authority which will increase the amount of the housing assistance payment, the EHA will determine whether it has sufficient funding to cover the increase. In the event that there is insufficient funding, then the EHA may deny the request.

## SECTION XI. LEASING OF DWELLING UNITS TO VOUCHER HOLDERS.

- A. Information to Owner. The EHA will respond to inquiries from owners who have been approached by Voucher holders by explaining major program procedures, including lease provisions, lease approval procedures, housing quality inspections, contract provisions and payment procedures. The EHA will also furnish copies of the pertinent forms.

The EHA must inform the owner that the EHA has not screened the Household's behavior or suitability for tenancy and that such screening is the owner's responsibility. Owners are permitted and encouraged to screen households on the basis of their tenancy histories including factors such as:

- the payment of rent and utilities;
- the care for a unit and premises;
- respecting the rights of others;
- drug related criminal activity or other criminal activity that is a threat to the life, safety or property of others; and
- compliance with other essential conditions of tenancy.

The EHA encourages owners of decent, safe and sanitary rental units to rent to Section 8 HCV participants. The EHA shall take the following actions to encourage participation by owners of units located outside areas of poverty or minority concentration:

1. The EHA shall maintain communication with local property management companies. These resources will be used to make owners aware of the benefits of the Section 8 HCV Rental Assistance Program.
  2. In order to expand participation of new owners who are interested in the program or who are unfamiliar with the program, EHA staff shall call the prospective owner to explain the benefits of the Section 8 HCV program and encourage their participation.
  3. Housing representatives will attend local agency and community fairs to increase awareness of the program and benefits for owners.
- B. Request to EHA for Lease Approval. When a Household has found a unit it wants and the owner is willing to lease, the Household shall submit to the EHA a request for lease approval signed by the owner and the Household. In addition, any further agreements between the owner and Section 8 HCV participant must be approved by the EHA. Failure to secure such approval could result in cancellation of the participant from the program.
1. A Household becomes a participant in the existing Section 8 HCV program when the EHA executes a contract with an owner for housing assistance on behalf of the Household.

2. Requests for Lease Approval may not be approved for a single dwelling unit with a swimming pool, or multi-family units if a member of the household is a child/children under the age of 12 and there exists an un-enclosed swimming pool that is accessible to said child/children.

C. Rent Reasonableness

The purpose of the Rent Reasonableness Test is to assure that a fair rent is paid for units selected for participation in the Rental Assistance Program and the program does not have the effect of inflating rents in the community. Rent reasonableness determinations are made when units are placed under contract for the first time, before any increase in rent to the owner, and if there is a 5% decrease in the published Fair Market Rent. The EHA will determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the EHA will consider:

- The location, size, unit type, quality, and age of the unit.
- Any amenities, housing services, maintenance and utilities provided by the owner under the lease.

D. Decent, Safe, and Sanitary Condition of Unit. Before approving a lease, the EHA shall inspect the unit to determine that it is in decent, safe and sanitary condition in accordance with 24 CFR 882.109 as amended by 982.401, 982.402, and 982.405 (Housing Quality Standards).

1. If there are defects or deficiencies which must be corrected in order for the unit to be decent, safe and sanitary, the EHA shall so advise the owner in writing, Before a contract is executed, the unit must be reinspected to ascertain that the necessary work has been done and the unit is decent, safe and sanitary.
2. A report for every inspection and reinspection under this paragraph shall be prepared and maintained in the files of the EHA. Each report shall specify (a) any defects or deficiencies which must be corrected in order for the unit to be decent, safe and sanitary, and (b) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the owner that damages were caused during the period of occupancy by the Household.

E. Security Deposits

The owner may collect a security deposit that does not exceed an amount allowed by state law nor exceeds deposit requirements for other unassisted units.

When the tenant moves out, the owner, subject to state or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease as reimbursement for any unpaid rent payable by the tenant, damages to the unit or for other amounts the tenant owes under the lease. The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item.

After deducting the amount, if any, used to reimburse the owners, the owner must refund promptly the full amount of the unused balance to the tenant.

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.

F. Household Move Out.

If the Household moves out of the unit, the EHA may not make any housing assistance payment to the owner for any month after the month when the Household moves out. The owner may keep the housing assistance payment for the month when the Household moves out of the unit.

If the Household terminates the lease on notice to the owner, the Household must give the EHA a copy of the notice at the same time. If the Household wants to move to a new unit, the Household must notify the EHA and the owner before moving from the old unit. If the Household wants to move to a new unit that is located outside the initial housing authority jurisdiction, the notice to the initial housing authority must specify the area where the Household wants to move.

G. Household Move out with Continued Tenant Based Assistance.

A Household may move to a new unit with continued tenant based assistance if:

- The assisted lease for the old unit has terminated because of the EHA terminating the HAP contract for the owner's breach, or the lease was terminated by mutual agreement of the owner and the tenant.
- The owner has given the tenant notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgement or other process allowing the owner to evict the tenant.
- The tenant has given notice of lease termination.
- The Household has no unmet financial obligations to the EHA or any other Housing Authority.
- The Household has not violated its Voucher of Participation in the Section 8 HCV program.
- The Household has not moved during the past year.

If a participant Household 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 Household moves out of the first assisted unit. Overlap of the last housing assistance payment, for the month when the Household moves out of the old unit, and the first assistance payment for the new units, is not considered to constitute a duplicate housing subsidy.

The EHA may deny permission to move if the EHA does not have sufficient funding for continued assistance.

H. Approval of Lease.

1. The EHA shall approve the lease upon determining that the Contract Rent can be approved, that the unit the Household wishes to lease is in decent, safe and sanitary condition, and that the proposed lease complies with the program requirements.
  - (a) No otherwise acceptable unit shall be disapproved on the grounds that it is either larger or smaller than the size unit specified on the Household's Voucher provided that:
    - (1) Undersized Unit. The dwelling unit contains at least one sleeping room or living/sleeping room or appropriate size for each two persons.
    - (2) Oversized Unit. The Contract Rent plus any allowances<sup>3</sup> does not exceed the fair market rent for the smaller size unit as stated on the Household's Voucher, or such higher rent can be approved by the EHA or HUD.
    - (3) Household Requests for Transfers to Larger Units. In the event a Household requests a transfer to a larger unit due to a change in Household composition (which the EHA must approve except for newborn, adoption or court awarded custody of a child), the unit into which the Household wishes to transfer will have a minimum number of bedrooms equivalent to the bedroom size specified in the Voucher.
2. The HAP contract must be executed no later than 60 days from the beginning of the lease term. No payments may be made to the owner until the HAP contract is executed. Within the 60 day period HAP payments can be made retroactive to the beginning of the lease.
3. The EHA must not approve a unit if:
  - The owner has been debarred, suspended or subject to a limited denial of participation under 24 CFR part 24.
  - The federal government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending or the court has determined that the owner violated the Fair Housing Act

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<sup>3</sup> The Utility and other allowances shall be for the size unit stated on the Voucher.

- The owner has violated obligations under a HAP contract.
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
- The owner has a history or practices of non-compliance with the HQS for units leased under the tenant-based programs or with applicable housing standards for units leased with project-based Section 8 HCV assistance.
- The owner has a history or practices of renting units that fail to meet state or local housing codes, such as illegal units.
- The owner has not paid state or local real estate taxes, fines or assessments.

I. Amount of Rent Payable by The Household.

1. The EHA shall determine the amount of rent payable by the Household to the owner, which shall be the amount of the Total Tenant Payment, or the amount of such contribution less the amount of any allowance for utilities and other services not to be provided by the owner.
2. If the Total Tenant Payment is less than the allowance for utilities and other services, resulting in utility reimbursement, the EHA shall pay the difference directly to the Household.
3. A voucher holder may pay more than the payment standard providing they are willing to pay the difference from their own income sources.
4. When a voucher holder pays less than the payment standard, they receive the savings in the form of a reduction in their contribution toward the rent, except in no case shall they pay less than 10 percent of their total monthly income.

J. Notice to Owner and Household.

1. Lease Disapproval. If the EHA determines that the lease cannot be approved for any reason, including the condition of the unit, the EHA shall so notify the owner and the Household in writing.
2. Lease Approval.
  - (a). Upon approval of the lease, a Housing Assistance Payments Contract shall be prepared by the EHA and presented to the owner for signature along with the lease and unit inspection form.
  - (b). Immediately upon the return and execution of the above documents, the EHA shall mail the lease/addendum to lease, copy of HAP Contract and unit inspection form to the owner, and a copy of the lease and unit inspection form to the Household.

3. Files.

- (a). The EHA shall maintain files on all requests for lease approval together with dwelling inspection reports (see Section XI.J.3(b)) and agency determination notices relating to any unit with deficiencies.
- (b). All complaints by Households concerning compliance by the owner with the EHA's housing quality standards shall be retained in the EHA's files for three years.

K. Owners Responsibilities and Breach of Contract

- 1. Late Fee to Owner. The EHA must pay the Housing Assistance Payment promptly in accordance with the HAP contract. If the EHA fails to make timely payment, the EHA may be obligated to pay a late payment fee in accordance with State or local law. The EHA may use only administrative fee income or administrative fee reserve (formerly operating reserve) to pay the fee. If the owner claims non-receipt of HAP and EHA or contractor records show the check was issued in a timely manner, the EHA or contractor will reissue the check no more than one time during a six month period without a charge for reissuance. If check must be issued more frequently, there will be a \$10 charge to the owner for reissuance.
- 2. Owner responsibilities. The owner is responsible for performing all the owner's obligations under the HAP contract and the lease.
- 3. Breach of Contract. Any of the following actions by the owner is a breach of contract:
  - (a). Any violation of the HAP contract,
  - (b). Owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program,
  - (c). Owner has failed to comply with regulations for applicable mortgage insurance or loan program,
  - (d). Owner engaged in drug trafficking.
- 4. Remedy for Breach of Contract. For HQS failures, the EHA will abate HAP payments until the breach is corrected. EHA will terminate HAP payments for other breaches, such as drug trafficking.

L. Business in Unit

Legal profit-making activities in the unit are allowed to encourage work and earnings by assisted households, provided the use of the unit for business purposes is incidental to the primary use of the unit for residence by the Household. Owner consent is not required. However, the owner may attach "house rules" that restrict or govern business activity in the unit. Business cannot violate related City codes nor HQS.

**SECTION XII. REEXAMINATION OF HOUSEHOLD ELIGIBILITY AND REDETERMINATION OF INCOME.**

- A. Periodic Reexamination of Household Status and Income. To assure that a Household continues to remain eligible for Housing Assistance Payments and to make appropriate adjustments in the rent paid by the Household, the reexamination of Household income, composition, and extent of exceptional medical and other child care expenses shall be made by the EHA at least annually from the effective date of the lease.

After the Household's eligibility status and annual income have been redetermined, such action as necessary may be taken (see Section XII.D for procedures and Section XII.E, F, and G for actions required). Households shall be advised of the applicable portability regulations at the time of recertification.

- B. Special Reexaminations. If at time of initial occupancy or periodic reexamination, a Household is clearly very low-income, but it is not possible to make a reasonable accurate estimate of anticipated income for the next 12 month period, the following shall apply:

1. A special reexamination shall be scheduled<sup>4</sup> for specified times (either 30, 60 or 90 days) depending upon the staff member's estimate of time for Household's circumstances to stabilize. Controls must be established to assure compliance.

- (a). If at the time of such special reexamination, it is still not possible to make a reasonably accurate estimate of the Household's income, special reexaminations shall continue to be scheduled and conducted until such time as a reasonable estimate can be made for a 12-month period.

2. For rent determination purposes, the Household's rate of income, based on the amount expected to be received by the Household from the date of the current determination to the date of the special reexamination, shall be projected for a 12-month period, even though it is known that income in such amount or from such sources will not continue for that period.

3. Families whose past employment has been sporadic or who are on welfare, then work, then are unemployed, should not be given a special reexamination if such an income pattern is expected to continue, as a reasonable twelve months' estimate of their income may be based upon past and present rate of income.

- C. Interim Redetermination of Annual Income and Adjustment of Rent. No adjustments to Household's Total Tenant Payment are to be effected between dates of periodic reexaminations or pre-scheduled reexaminations (as set forth in Section XII.B above) except as provided below:

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<sup>4</sup> Use of special reexamination provisions assumes that in the year the Contract terminates, the required periodic reexaminations procedures will be started no later than the beginning of the third month prior to the Contract termination date and completed prior to the last month of the Contract Rent.

1. In addition to submitting such information as may be required at time of periodic or special reexamination of eligibility and redetermination of Household contribution, Section 8 HCV participants and Voucher holders shall report to the EHA within fourteen calendar (14) days from the effective day the following defined changes in Household circumstances:
  - (a). Changes Affecting Head of Household - Loss of a head of household through death, divorce or other continuing circumstances, or addition of a Household member who in accordance with EHA policy should become a Head of Household.
  - (b). Changes Affecting Head or Spouse or Household Member over the Age of Eighteen.
    - (1) The loss or addition to the Household through marriage, reconciliation, divorce, permanent separation, death, birth, desertion and/or other continuing circumstances;
    - (2) Commencement, discontinuance or change in the amount of welfare assistance, social security, SSI, private retirement, disability, and/or unemployment benefits;
    - (3) Entry into or discharge from military service;
    - (4) Unemployment for whatever reasons;
    - (5) Employment or reemployment;
    - (6) Monthly increases or decreases in total Household income in excess of \$50.00; monthly decreases in income less than \$50.00 may be considered by the Authority's office in extreme hardship cases.
    - (7) Commencement or discontinuance of other sources of income which substantially affect the total income of the Household (to be determined by EHA staff).

Reports of the above defined circumstantial changes are to be made on or before the first rent payment period subsequent to the occurrence of the change. Upon receipt of such report, an Interim Reexamination of Household Income and Total Tenant Payment will be conducted. Failure to report such occurrence of the above defined circumstantial changes will require retroactive charges when necessary, and may be grounds for termination from the Section 8 HCV program.

In addition, a Household may at any time request a redetermination of its Total Tenant Payment on the basis of changes in Household Income or other relevant circumstances. If persons related to the assisted Household move into the unit (with owner's permission) the EHA will continue assistance only if additional income is accounted for in the Household rent calculation, the occupancy stan-

dards are maintained including the sleeping room provision, and any resulting increase in rent remains with the FMR for the original size.

2. An assisted Household who reports a decrease in income (lasting in excess of 30 days) will be given an interim redetermination of income. If upon verification, it is determined that the Total Tenant Payment exceeds 30 percent of the annual income, an appropriate adjustment shall be made.<sup>5</sup>
3. In the event the rent is decreased in accordance with this provision, the Household shall be required to report all income increases which occur prior to the rent reexamination and rent will be appropriately adjusted.<sup>6</sup> Reports of the above defined circumstantial changes are to be made on or before the first rent payment period subsequent to the occurrence of the change. Upon receipt of such report, an interim redetermination of Household income and rent will again be conducted.
4. The EHA will notify the Household of any change in the Household portion of rent payable to the owner and will notify the owner of any change in the Housing Assistance Payment (HAP) to be effective according to the following:
  - (a). Increases in rent are to be made effective the first of the second month following that in which the change occurred (retroactively if necessary).
  - (b). Decreases in rent are to be made effective the first of the month following that in which the EHA is able to verify the reported change(s). No downward rent adjustments are to be processed until all the facts have been verified.

D. Reexamination Procedures.

1. Application for Tenant Eligibility and Recertification. The head of household of each assisted Household is to be required at the time of the reexamination to submit information for completion of the certification and recertification of tenant eligibility (HUD-50058) on a EHA form, and to sign that form. All entries are to be made in ink, indelible pencil, or typed in. Corrections and changes are to be made by lining through the original entry and entering the correct data. Such changes are to be dated and initialed by the person recording the changed data, and the reasons and authority for such changes are to be noted in the record.
2. Verification and Documentation of Reexamination Data. To assure that the data on which the determinations of eligibility for rent to be paid and the size of

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<sup>5</sup> Use of Special Reexamination provisions assumes that in the year the contract terminates, the required periodic reexaminations procedures will be started no later than the beginning of the third month prior to the contract termination date and completed prior to the last month of the contract rent.

<sup>6</sup> Interim adjustments will be made only if there is a minimum \$10.00 increase or decrease in the monthly Total Tenant Payment. Data assembled at the time of the reexamination is to be filed in the folder set up for the Family.

dwelling required are true and complete, the information submitted by each tenant is to be verified. Complete and accurate verification records as specified in Section VI are to be maintained in the Household folder.

Verification data are to be reviewed and evaluated as they are received for completeness, adequacy, and conclusiveness. Where the information received is not completely adequate in all respects, follow-ups, or new efforts to obtain such information are to be made and carried through to conclusion. When verification of all necessary items for each application are completed, the certification/recertification of tenant eligibility form is to be completed and signed by a designated staff member. This summary is to cover the following determinations and the basis for such determinations:

3. Summary of Verified Data

- (a). Eligibility of the tenant group as Household or as the residual of a Household
- (b). Size of dwelling required;
- (c). Eligibility of the Household with respect to income limits for continued participation;
- (d). Extent of medical or other child care expenses;
- (e). Rent which Household is to pay;
- (f). Amount of Housing Assistance Payment;
- (g). Social Security Numbers for all Household members, or certifications for Household members who do not have a social security number.

E. Notice to Household and Owner Following Reexamination. Within 30 days after the Household has submitted all the required information, the EHA is to notify the Household and owner of any increase or decrease in the amount of rent payable by the Household and housing assistance payments to the owner.

- 1. Overcrowded Unit. If the EHA determines that the unit is overcrowded due to an increase in Household size, a Voucher shall be issued to the Household in accordance with the terms of the lease or upon mutual rescission of the existing lease and the Household and the EHA shall try to find an acceptable unit as soon as possible. If an acceptable unit is found that is available for occupancy by the Household, and the lease with the first owner can be terminated in accordance with its terms, the contract with the first owner shall be terminated and Housing Assistance Payments shall be made available to the Household for occupancy in the acceptable unit. Housing assistance payments will not be terminated unless the Household rejects without good reason the offer of a unit which the EHA judges acceptable.

2. If the EHA determines that the unit is too large for the Household due to decrease in Household size, provisions of the paragraph above apply, except that if the contract rent plus any allowances does not exceed the fair market rent for the smaller size unit required, the Household may remain in the dwelling occupied.
- F. Termination of Payments Due to Household Ineligibility. If it is found that the Household is ineligible for continued participation as the result of the portion of rent payable by the Household (contract rent plus any utility allowances ) equaling or exceeding the owner's rent for the dwelling it occupies, the EHA shall notify the Household and the owner of termination of Housing Assistance Payments to the owner, effective with a 30 day notice to the owner or expiration of the current HAP contract, whichever occurs first (the HAP Contract shall expire upon termination of the lease or expiration of the EHA's ACC with the U.S. Department of HUD, whichever occurs first).
1. This notice shall also state that such termination of eligibility shall not affect the Household's other rights under its lease, nor shall such termination preclude resumption of payments as result of subsequent changes in income or rents or other relevant circumstances during the term of the contract.
  2. If the contract terminates at such time that Household is ineligible for payments, the contract shall not be renewed. In addition, if six months has elapsed since the date of the last housing assistance payment, the contract shall be terminated even if the termination date has not yet been reached.
- G. Instances of Misrepresentation of Non-compliance by the Household.
1. If it is found, upon reexamination that at the time of issuance of the Voucher or any subsequent interim or periodic reexamination, the Household made misrepresentations which have resulted in their paying a lower rent than they should, they will be required to pay the difference between the rent they have paid and what they should have paid. HAPs will be adjusted to reflect this increased rental payment. Misrepresentations by the Household shall also be grounds for termination by the EHA from the Section 8 HCV rental assistance program.
  2. If it is found at the time of reexamination, or any other time, that the Household has failed to report changes in income as required after the interim adjustment lowering the rent and such changes would have required them to pay a higher rent, the increased rent is to be made retroactive to the second month after the date on which the change occurred. Failure to report changes in income or Household circumstances within 10 days from the date the change took place shall be grounds for termination by the EHA from the Section 8 HCV rental assistance program.
  3. If the Household fails to comply with its responsibilities under the Voucher, the EHA may determine the Household ineligible for further HAPs provided that the Household has been given reasonable notice (with a copy to the owner) and the opportunity to respond.

- (a). The EHA shall notify the Household and owner of such determination.
    - (b). Such determination shall be grounds for termination of the lease by the owner.
  4. The EHA shall deny eligibility to previous program participants for whom the EHA has processed damage, vacancy and/or unpaid rent claims, or who have violated their Family Obligations. This provision does not apply to those participants who did not violate their Family Obligations and/or who have fully reimbursed the EHA such claims.
- H. Annual Inspection of Unit. As a condition for continuing to make HAPs, the EHA requires the inspection of each dwelling unit being assisted at least annually to assure that decent, safe and sanitary conditions are being maintained by the owner and that the agreed upon services are being furnished.
  1. In the case of Families being reexamined annually, this inspection shall be a part of the reexamination procedure.
  2. If the EHA determines that the dwelling unit no longer qualifies for the HAPs, the owner shall be so notified and if he refuses to or fails to bring the dwelling up to standard, the HAPs Contract shall be terminated.
  3. If the Household is still eligible in accordance with Section XII.E, and the reason the unit failed to meet HQS was not due to tenant damage or abuse above normal wear and tear, and the Household wishes to move to a dwelling where it can continue to be assisted, the EHA shall issue another Voucher or process a request for lease approval, as the case may be in accordance with Section X.C.
  4. The owner is not responsible for a breach of HQS that is not caused by the owner, but is caused by the Household. The EHA may terminate assistance to a Household because of HQS breach by the Household.
- I. Evictions/Termination of Tenancy.
  1. For leases/tenancies entered into on or after October 1, 1981, the owner shall not terminate tenancy during the term of the HAP contract/lease nor refuse to enter into a new assisted lease with the same Household, except for;
    - (a). Serious or repeated violation of the terms of the lease;
    - (b). Violation of federal, state or local law which imposes specific requirements on a tenant in connection with the occupancy or use of the dwelling unit and surrounding premises;
    - (c). Drug related criminal activity or violent criminal activity;
    - (d). Other good cause.
  2. The following are some examples of "other good cause" for termination of tenancy by the landlord: failure by the tenant Household to accept the offer of a

new lease; a tenant Household history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by tenant Household members or other persons under tenant's control; the landlord's desire to utilize the unit for personal or Household use or for a purpose other than use as a residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause", but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

3. The landlord may evict the tenant from the unit only by instituting a court action. The landlord must notify the EHA, in writing, of the commencement of procedures for termination of tenancy, at the same time that landlord gives notice to the tenant under state or local law. The notice to the EHA may be given by furnishing the EHA a copy of the notice to the tenant.
4. The EHA does not play any role in the actual eviction process. The EHA policy, however, allows for:
  - (a). Determination of continued Household participation in the Section 8 HCV program, regardless of whether or not there is a court "authorized" eviction,
  - (b). Tenant appeal process (Exhibit I), if, in fact, tenant is denied continued program participation and
  - (c). Determination of continued landlord participation, based upon "findings" by the EHA. If the landlord is guilty of any of the following "findings," the EHA may bar future continued participation:
    - Discriminatory tenant selection practices
    - Claiming/collecting monies not due the owner (i.e., rental for vacant unit, non-existent repairs, vacancy loss, etc.)
    - "Manufacturing" evidence against existing tenant to justify "eviction action"

J. Owner Term Notice

Owner must give 90 days notice to EHA and Household before terminating the lease and HAP Contract because of business or economic reasons ("opt-out"). The EHA must notify the owner that the HAP Contract will terminate due to insufficient funding ("expiration"). The HAP Contract automatically terminates after 180 calendar days after the last housing assistance payment to the owner.

K. Absence from Unit

Household may be absent from the unit no more than 180 consecutive calendar days for any reason. If the absence is due to illness, tenant is allowed up to the maximum days dependent on a doctor's recommendation. If absence is due to vacation or visits to

relatives, the maximum time allowed is two months.

L. Household Break-Up

When a court determines the disposition of property between members of the assisted Household in a divorce or separation under a settlement or judicial decree, the EHA is bound by the court's determination of which Household members continue to receive assistance. If there is no court order, then assistance remains with the adult Household members of the original assisted unit.

## SECTION XIII. SPECIAL PROGRAMS

### A. Homeownership

#### 1. GENERAL PROVISIONS.

The Section 8 Homeownership Program of the EHA permits Eligible participants in the Section 8 HCV program, including participants with portable vouchers, the option of purchasing a home with their Section 8 HCV assistance rather than renting. The homeownership option is limited to five percent (5%) of the total Section 8 HCV voucher program administered by the EHA in any fiscal year, provided that disabled families shall not be subject to the 5% limit.

Eligible applicants for the Section 8 homeownership program must have completed an initial Section 8 HCV lease term, must not owe the EHA or any other Housing Authority any outstanding debt, and must meet the eligibility criteria set forth herein.

Section 8 homeownership assistance may be used to purchase the following type of homes within the City of Encinitas: new or existing single-family, condominium, planned use developments, cooperatives, lofts, live/work units, or manufactured homes. The EHA also will permit portability of Section 8 homeownership assistance to another jurisdiction, provided the receiving jurisdiction operates a Section 8 homeownership program for which the Section 8 homeownership applicant qualifies or authorizes the EHA to administer the homeownership assistance in their jurisdiction.

#### 2. PARTICIPANT ELIGIBILITY REQUIREMENTS.

Participation in the Section 8 homeownership program is voluntary. Each Section 8 homeownership participant must meet the general requirements for admission to the Section 8 HCV program as set forth in the EHA's Administrative Plan.

Such Section 8 HCV participants also must be "eligible" to participate in the homeownership program. The additional eligibility requirements for participation in the EHA's Section 8 homeownership program include that the participant must: (A) be a first-time homebuyer or have a family member who is a person with disabilities; (B) with the exception of elderly and disabled households, meet a minimum income requirement without counting income from "welfare assistance" sources; (C) with the exception of elderly and disabled households, meet the requisite employment criteria; (D) have completed an initial lease term in the Section 8 HCV program; (E) have fully repaid any outstanding debt owed to the EHA or any other Housing Authority; (F) not defaulted on a mortgage securing debt to purchase a home under the Section 8 homeownership option; and (G) not have any family member who has a present ownership interest in a residence at the commencement of the homeownership assistance.

##### a. First-Time Homebuyer.

Each Section 8 HCV participant, except families with a disabled member, must be a first-time homebuyer. A "first-time homebuyer" means that no member of the household has had an ownership interest in any residence during the three years preceding commencement of the homeownership assistance.

However, the following exceptions are allowed: 1) a single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by a spouse) is considered a "first-time homebuyer"; 2) the right to purchase title to a residence under a lease-purchase agreement shall not be considered an "ownership interest."; and 3) a member of a cooperative (as defined in 24 CFR § 982.4) also qualifies as a "first time homebuyer".

b. Minimum Income Requirement.

(1) Amount of Income.

At the time the participant begins receiving the homeownership assistance, the head of household, spouse, and/or other adult household members who will own the residence, must have a gross annual income at least equal to the Federal minimum hourly wage multiplied by 2000 hours.

(2) Exclusion of Welfare Assistance Income.

With the exception of elderly and disabled families, the EHA will disregard any "welfare assistance" income in determining whether the participant meets the minimum income requirement. Welfare assistance includes assistance from Temporary Assistance for Needy Families ("TANF"); Supplemental Security Income ("SSI") that is subject to an income eligibility test; food stamps; general assistance; or other welfare assistance specified by HUD. The disregard of welfare assistance income under this section affects the determination of minimum monthly income in determining initial qualification for the homeownership program. It does not affect the determination of income-eligibility for admission to the Section 8 HCV program, calculation of the participant's total tenant payment, or calculation of the amount of homeownership assistance payments.

c. Employment History.

With the exception of disabled and elderly households, each participant must demonstrate that one or more adult members of the household who will own the home at commencement of the homeownership assistance is employed full-time (an average of 30 hours per week) and has been continuously employed for one year prior to execution of the sales agreement. In order to reasonably accommodate a participant's participation in the program, the EHA will exempt families that include a person with disabilities from this requirement. The EHA's Executive Director may also consider whether, and to what extent, an employment interruption is considered permissible in satisfying the employment requirement. The Executive Director may also consider successive employment during the one-year period and self-employment in a business.

d. Completion of Initial Lease Term.

Applicants for and new participants in the Section 8 HCV program shall be ineligible for participation in the Section 8 homeownership program until completion of an initial Section 8 HCV lease term and the participant's first annual recertification in the Section 8 HCV program. Nothing in this provision will preclude Section 8 HCV participants that have completed an initial lease term in another jurisdiction from participating in the Section 8 homeownership program.

e. Repayment of Any Housing Authority Debts.

Participants in the Section 8 HCV program shall be ineligible for participation in the Section 8 homeownership program in the event any debt or portion of a debt remains owed to the EHA or any other Housing Authority. Nothing in this provision will preclude Section 8 HCV participants that have fully repaid such debt(s) from participating in the Section 8 homeownership program.

f. Additional Eligibility Factors.

(1) Elderly and Disabled Households.

Elderly and disabled families are exempt from the employment requirements set forth in Section XIII.A.2.c. above. In the case of an elderly or disabled participant, the EHA will consider income from all sources, including welfare assistance in evaluating whether the household meets the minimum income required to purchase a home through the Section 8 homeownership program.

(2) Prior Mortgage Defaults.

If a head of household, spouse, or other adult household member who will execute the contract of sale, mortgage and loan documents has previously defaulted on a mortgage obtained through the Section 8 homeownership program, the participant will be ineligible to participate in the homeownership program.

### 3. PARTICIPATION REQUIREMENTS.

Once a participant is determined to be eligible to participate in the program, they must comply with the following additional requirements: (A) complete a homeownership counseling program approved by the EHA prior to commencement of homeownership assistance; (B) within a specified time, locate the home proposed for purchase; (C) submit a sales agreement containing specific components to the EHA for approval; (D) allow the EHA to inspect the proposed homeownership dwelling to ensure that the dwelling meets appropriate housing quality standards; (E) obtain an independent inspection covering major building systems; (F) obtain EHA approval of the proposed mortgage (which must comply with generally accepted mortgage underwriting requirements); and (G) enter into a written agreement with the EHA to comply with all of its obligations under the Section 8 homeownership program.

a. Homeownership Counseling Program.

A participant's involvement in the homeownership program is conditioned on the participant attending and successfully completing a homeownership counseling program provided or approved by the EHA prior to commencement of homeownership assistance. The homeownership counseling program will cover home maintenance; budgeting and money management; credit counseling; negotiating purchase price; securing mortgage financing; finding a home; fair housing; Real Estate Settlement Procedures Act (RESPA) obligations; predatory lending issues and the advantages of purchasing and locating homes in areas that do not have a high concentration of low-income families.

The counseling agency providing the homeownership counseling program shall either be approved by HUD or the program shall be consistent with the homeownership counseling provided under HUD's Housing Counseling program. The EHA may require participants to partake in an EHA-approved homeownership counseling program on a continuing basis.

b. Locating and Purchasing a Home.

(1) Type of Home.

A participant approved for Section 8 homeownership assistance may purchase the following type of homes within the City of Encinitas: a new or existing home, a single-family home, a condominium, a home in a planned use development, a cooperative, a loft or live/work unit, or a manufactured home to be situated on a privately owned lot in a mobile home park. The home must be already existing or under construction at the time the EHA determines the participant eligible for homeownership assistance. In accordance with Federal Regulations regarding portability, participants may purchase a home in another jurisdiction, provided the receiving jurisdiction operates a Section 8 homeownership program for which the Section 8 homeownership applicant qualifies or authorizes the EHA to administer the homeownership assistance in their jurisdiction. In the former case, a participant's involvement in the Section 8 homeownership program will be subject to the Section 8 homeownership program and policies of the receiving jurisdiction.

(2) Purchasing a Home.

Once a home is located and a sales agreement approved by the EHA is signed by the participant, the participant shall have up to three (3) months, or such other time as is approved by the EHA's Executive Director or set forth in the EHA-approved sales agreement, to purchase the home.

(3) Failure to Complete Purchase.

If a Section 8 HCV participant is unable to purchase the home within the maximum time permitted by the EHA, the EHA shall continue the

participant's involvement in the Section 8 HCV program. The participant may not reapply for the Section 8 homeownership program until they have been determined eligible for the homeownership option.

#### (4) Lease-Purchase

Participants may enter into lease-purchase agreements while receiving Section 8 HCV rental assistance. All requirements of the Section 8 HCV program apply to lease-purchase agreements, except that participants are permitted to pay an extra amount out-of-pocket to the owner for purchase related expenses—a "homeownership premium." Any "homeownership premium," defined as an increment of value attributable to the value of the lease-purchase right or agreement, is excluded from the EHA's rent reasonableness determination and subsidy calculation, and must be absorbed by the participant. When a lease-purchase participant is ready to exercise their option, they must notify the EHA and apply for the homeownership option. If determined eligible for homeownership assistance, the participant may be admitted to the homeownership program and must meet all the requirements of these policies.

#### c. Sales Agreement.

Prior to execution of the offer to purchase or sales agreement, the participant must provide the financing terms to the EHA for approval. The sales agreement must provide for inspection by the EHA and the independent inspection referred to in Section XIII.A.3.d. and must state that the purchaser is not obligated to purchase unless such inspections are satisfactory to the EHA. The contract also must provide that the purchaser is not obligated to pay for any necessary repairs without approval by the EHA. The sales agreement must provide that the purchaser is not obligated to purchase if the mortgage financing terms are not approved by the EHA pursuant to Section XIII.A.3.e. The sales agreement must also contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

#### d. Independent Initial Inspection Conducted.

To ensure the home complies with the housing quality standards of the Section 8 program, homeownership assistance payments may not commence until the EHA first inspects the home. An independent inspection of existing homes covering major building systems also must be completed by a professional selected by the participant and approved by the EHA. The EHA will not pay for the independent inspection. The independent inspection report must be provided to the EHA. The EHA may disapprove the unit due to information contained in the report or for failure to meet federal housing quality standards.

e. Financing Requirements.

The proposed financing terms shall be submitted to and approved by the EHA prior to close of escrow. The EHA shall determine the affordability of the participant's proposed financing. In making such determination, the EHA may take into account other participant expenses, including but not limited to child care, unreimbursed medical expenses, education and training expenses and the like. Certain types of financing, including but not limited to, balloon payment mortgages, unless convertible to a variable rate mortgage, are prohibited and may not be approved by the EHA. Seller-financing mortgages shall be considered by the EHA on a case by case basis. If a mortgage is not FHA-insured, the EHA will require the lender to comply with generally accepted mortgage underwriting standards consistent with those of HUD/ FHA, Ginnie Mae, Fannie Mae, Freddie Mac, California Housing Finance Agency (CHFA), USDA Rural Housing Services, the Federal Home Loan Bank, or other private lending institution.

f. Compliance with Family Obligations.

A participant must agree in writing to comply with all Family Obligations under the Section 8 HCV program and the EHA's homeownership policies. These obligations include (1) attending ongoing homeownership counseling, if required by the EHA; (2) complying with the mortgage terms; (3) not selling or transferring the home to anyone other than a member of the assisted family who resides in the home while receiving homeownership assistance; (4) not refinancing or adding debt secured by the home without prior approval by the EHA; (5) not having a present ownership interest and/or not acquiring an ownership interest in another residence while receiving homeownership assistance; and (6) supplying all required information to the EHA, including but not limited to annual verification of household income, notice of change in homeownership expenses, notice of move-out, and notice of mortgage default. The EHA's Homeownership Family Obligation policies are set forth in Exhibit II hereto.

g. Compliance Lien

Upon purchase of a home, the participant must execute documentation as required by HUD and the EHA, consistent with State and local law, securing the EHA's right to recapture the homeownership assistance in accordance with Section XIII.5.c. below. The lien securing the recapture of homeownership subsidy may be subordinated to a refinanced mortgage.

4. AMOUNT OF ASSISTANCE.

The amount of the monthly assistance payment will be based on three factors: the voucher payment standard for which the participant is eligible; the monthly homeownership expense; and the participant's household income. The EHA will pay the lower of either the payment standard minus the total family contribution ("TFC") or the participant's monthly homeownership expenses minus the TFC. The Section 8 participant will pay the difference.

a. Determining the Payment Standard.

The voucher payment standard is the fixed amount the EHA annually establishes as the "fair market" rent for a unit of a particular size located within the EHA jurisdiction. In the homeownership program, the initial payment standard will be the lower of either (1) the payment standard for which the participant is eligible based on family size; or (2) the payment standard which is applicable to the size of the home the participant decides to purchase. The payment standard for subsequent years will be based on the higher of: (1) the payment standard in effect at commencement of the homeownership assistance; or (2) the payment standard in effect at the most recent regular reexamination of the participant's income and size. The initial payment standard, for purposes of this comparison, shall not be adjusted even if there is a subsequent decrease in participant size.

b. Determining the Monthly Homeownership Expense.

Monthly homeownership expense includes all of the following: principal and interest on the initial mortgage and any mortgage insurance premium (MIP) incurred to finance the purchase and any refinancing of such debt; real estate taxes and public assessments; homeowner's insurance; maintenance expenses per the EHA allowance; costs of major repairs and replacements per the EHA allowance (replacement reserves); utility allowance per the EHA's schedule of utility allowances; principal and interest on mortgage debt incurred to finance major repairs, replacements or improvements for the home including changes needed to make the home accessible; and homeowner association dues, fees or regular charges assessed, if any. Homeownership expenses for a cooperative member may only include EHA approved amounts for the cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home; principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt; home insurance; the allowances for maintenance expenses, major repairs and replacements and utilities; and principal and interest on debt incurred to finance major repairs, replacements, or improvements, including changes needed to make the home accessible.

c. Determining the Total Family Contribution

The TFC is that portion of the homeownership expense that the participant must pay. It is generally 30% percent of the participant's adjusted income, plus any gap between the payment standard and the actual housing cost. All participant income (including public assistance) will be counted to determine the participant's adjusted monthly income for purposes of determining the amount of assistance.

d. Payment to Lender

The EHA will provide the lender with notice of the amount of the housing assistance payment prior to close of escrow and will pay the EHA's contribution towards the participant's homeowner expense directly to the lender, unless

otherwise required by the lender. The participant will be responsible to submit their contribution to the lender unless otherwise required by the lender.

## 5. TERMINATION OF SECTION 8 HOMEOWNERSHIP ASSISTANCE.

### a. Grounds for Termination of Homeownership Assistance

#### (1) Failure to Comply with Family Obligations Under Section 8 HCV Program or EHA's Homeownership Policies.

A participant's homeownership assistance may be terminated if the participant fails to comply with its obligations under the Section 8 HCV program, the EHA homeownership policies, or if the participant defaults on the mortgage. If required, the participant must attend and complete ongoing homeownership counseling classes. The participant must comply with the terms of any mortgage incurred to purchase and/or refinance the home. The participant must provide the EHA with written notice of any sale or transfer of any interest in the home; any plan to move out of the home prior to the move; the participant's household income and homeownership expenses on an annual basis; any notice of mortgage default received by the participant; and any other notices which may be required pursuant to EHA homeownership policies. Except as otherwise provided in this Section, the participant may not convey or transfer the home to any entity or person other than a member of the assisted participant's family while receiving homeownership assistance.

#### (2) Occupancy of Home.

Homeownership assistance will only be provided while the participant resides in the home. If the participant moves out of the home, the EHA will not continue homeownership assistance commencing with the month after the participant moves out.

#### (3) Changes in Income Eligibility.

A participant's homeownership assistance may be changed in the month following annual recertification of the household income, but participation in the Section 8 Homeownership Program shall continue until such time as the assistance payment amounts to \$0 for a period of six (6) consecutive months.

#### (4) Maximum Term of Homeownership Assistance.

Notwithstanding the provisions of Section XIII.A.5.a, subparagraphs (1) through (3), except for disabled and elderly families, a participant may receive Section 8 homeownership assistance for no longer than ten (10) years from the date of close of escrow unless the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer, in which case the maximum term is 15 years. Families that qualify as elderly at the commencement of homeownership

assistance are not subject to a maximum term limitation. Families that qualify as disabled families at the commencement of homeownership assistance or at any time during the provision of homeownership assistance are not subject to a maximum term limitation. If a disabled participant or elderly participant ceases to qualify as disabled or elderly, the appropriate maximum term becomes applicable from the date homeownership assistance commenced; provided, however, that such participant shall be eligible for at least six additional months of homeownership assistance after the maximum term becomes applicable. The time limit applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is a spouse of any member of the household who has an ownership interest.

b. Procedure for Termination of Homeownership Assistance.

A participant in the Section 8 Homeownership program shall be entitled to the same termination notice and informal hearing procedures as set forth in the Administrative Plan of the EHA for the Section 8 HCV program.

c. Recapture of Homeownership Assistance

In certain circumstances the homeownership assistance provided to the participant is subject to total or partial recapture upon the sale or refinancing of the home. Sales proceeds that are used by the participant to purchase a new home with Section 8 homeownership assistance are not subject to recapture. Further, a participant may refinance to take advantage of better terms without any recapture penalty, provided that no proceeds are realized ("cash-out"). Only "cash-out" proceeds from refinancing and sales proceeds not used to purchase a new home with Section 8 assistance less those amounts provided for in CFR §982.640 are subject to recapture. Further, the amount of homeownership assistance subject to recapture shall automatically be reduced in annual increments of 10% beginning one year from the purchase date. At the end of 10 years the amount of homeownership assistance subject to recapture will be zero.

6. CONTINUED PARTICIPATION IN SECTION 8 HCV PROGRAM.

a. Default on FHA-Insured Mortgage.

If the participant defaults on an FHA-insured mortgage, the EHA may permit the participant to move with continued Section 8 HCV rental assistance if the participant demonstrates that they have (a) conveyed title to the home to HUD or its designee, as required by HUD; and (b) moved from the home within the period established or approved by HUD.

b. Default on non-FHA-Insured Mortgage.

If the participant defaults on a mortgage that is not FHA-insured, the EHA may permit the participant to move with continued Section 8 HCV rental assistance if the participant demonstrates that they have (a) conveyed title to the home to the

lender, to the EHA or to its designee, as may be permitted or required by the lender; and (b) moved from the home within the period established or approved by the lender and/or the EHA. The EHA may or may not exercise its first right of refusal in this instance.

7. EHA ADMINISTRATIVE FEE.

For each month that homeownership assistance is paid by the EHA on behalf of the participant, the EHA shall be paid the ongoing administrative fee described in 24 CFR §982.152(b).

8. WAIVER OR MODIFICATION OF HOMEOWNERSHIP POLICIES.

The Executive Director of the EHA shall have the discretion to waive or modify any provision of the Section 8 homeownership program or policies not governed by statute or regulation for good cause or to comply with changes in HUD regulations or directives.

B. Project Based Vouchers

The EHA may issue up to 20 vouchers for Project Based Rental Assistance. Administration of the vouchers will comply with applicable regulations found in 24 CFR 983.

## SECTION XIV. TERMINATION OF ASSISTANCE

### A. Termination Because of Household Action or Inaction.

1. Denial of assistance for an applicant may include any or all of the following:

- denying listing on the EHA waiting list,
- denying or withdrawing a voucher,
- refusing to enter into a HAP contract or approve a lease; and
- refusing to process or provide assistance under portability procedures.

2. Termination of assistance for a participant may include any or all of the following:

- refusing to enter into a HAP contract or approve a lease
- terminating housing assistance payments under an existing HAP contract; and
- refusing to process or provide assistance under portability procedures.

### B. Grounds for Denial or Termination of Assistance.

1. If the Household violates any Household obligations under the program.
2. If any member of the Household has ever been evicted from public housing.
3. If any Housing Authority has ever terminated assistance under the voucher program for any member of the Household.
4. If any member of the Household commits drug-related criminal activity or violent criminal activity.
5. If any member of the Household commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.
6. If the Household currently owes rent or other amounts to the EHA or to another Housing Authority in connection with Section 8 HCV program or public housing assistance.
7. If the Household has not reimbursed any housing authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the Household under the lease.
8. If the Household breaches an agreement with the EHA to pay amounts owed to the EHA or amounts paid to an owner by the EHA.
9. If a Household participating in the Family Self-Sufficiency (FSS) program fails to comply, without good cause, with the Household's FSS contract of participation.
10. If the Household has engaged in or threatened abusive or violent behavior toward EHA personnel or contractors.

C. EHA Discretion to Consider Circumstances.

In deciding whether to deny or terminate assistance, the EHA has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual Household members, and the effects of denial or termination of assistance on other Household members who were not involved in the action or failure.

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

D. Requirement to Sign Consent Forms.

The EHA shall deny or terminate assistance if any member of the Household fails to sign or submit consent forms for obtaining information.

E. Restriction on Assistance to Non-citizens.

The Household shall submit required evidence of citizenship or eligible immigration status.

F. Violence Against Women Act (VAWA)

Denial of assistance to an applicant or termination of assistance of a participant for criminal activity is subject to the provisions of the Violence Against Women Act of 2005 as described below:

1. Being a victim of domestic violence, dating violence or stalking is not a basis for denial of assistance or admission to assisted housing if the applicant otherwise qualifies for assistance or admission.
2. Incidents or threats of abuse will not be construed as serious or repeated violations of the lease agreement or other “good cause” for termination of the assistance, tenancy, or occupancy rights of a victim or abuse.
3. The EHA has authority to terminate voucher assistance for certain family members while permitting other members of a participant family to continue receiving assistance (providing the culpable family member will no longer reside in the unit). The EHA’s right to exercise this administrative discretion is not dependent on a bifurcated lease or other eviction action by the owner against an individual family member.
4. Certification of Abuse: The EHA will request that the victim of abuse complete the HUD form 50066 – Certification of Domestic Violence, Dating Violence or Stalking. This form must be provided within fourteen (14) business days from the date the EHA requests it. Without the certification, the EHA may terminate assistance.

## SECTION XV. HOUSEHOLD OBLIGATIONS.

- A. The Household must supply any information that the EHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or immigration status. The information requested for the use in regularly scheduled reexamination or interim reexamination of income and composition must be supplied. Social security numbers must be disclosed and verified. All information must be true and complete.
- B. The Household is responsible for any violation of HQS caused by the Household. The Household must allow the EHA to inspect the unit.
- C. The Household may not commit any serious or repeated violation of the lease.
- D. The Household must notify the EHA and the owner before the Household moves out of the unit, or terminates the lease on notice to the owner.
- E. The Household must promptly give the EHA a copy of any owner eviction notice.
- F. The Household must use the assisted unit for residence by the Household. The unit must be the Household's only residence.

The members of the household may engage in legal profit making business, but only if such activities are incidental to the primary use of the unit as a residence for the members of the Household.

- G. The composition of the assisted Household residing in the unit must be approved by the EHA. The Household must promptly inform the EHA of the birth, adoption or court-awarded custody of a child. The Household must request the EHA approval to add any other Household member as an occupant of the unit. A foster child or a live-in-aide may reside in the unit with EHA approval.
- H. The Household must not sublease or let the unit. The Household must not assign the lease nor transfer the unit.
- I. The Household must promptly notify the EHA if any Household member no longer resides in the unit.
- J. The Household must promptly notify the EHA of absence from the unit.
- K. The Household must not own or have any interest in the unit.
- L. The members of the Household must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs. Members of the Household may not engage in drug-related criminal activity or violent criminal activity.
- M. An assisted Household, or members of the Household, may not receive Section 8 HCV tenant-based assistance while receiving another housing subsidy for another unit or for a different unit under any duplicate federal, State or local housing assistance program.

## SECTION XVI. DEBTS OWED TO ENCINITAS HOUSING AUTHORITY

### A. Owner

If an owner is indebted to the EHA as a result of an overpayment, the owner will be requested to either pay the amount due in full or be advised that the overpayment will be deducted from future housing assistance payment(s) until the overpayment is paid. If the owner fails to pay the amount owed and there is not a future Housing Assistance Payment to offset the overpayment, the owner will be banned from renting to future Section 8 HCV participants until the debt is resolved.

### B. Applicant

An applicant must pay in full all debts, if any, owed to the EHA or any other Housing Agency before being admitted to the rental assistance program. An exception may be made if the applicant is current on a repayment agreement.

### C. Participant

A participant, including a participant under portability, with repayment agreements in good standing will be allowed to continue making payments under such agreements until the debt is paid in full. Failure to make timely payments will be grounds for termination of benefits. However, if a participant wishes to move or port to another jurisdiction, the balance must be paid in full prior to execution of a new contract. The EHA may approve an exception to this provision if the family demonstrates that they have made timely payments in accordance with the Repayment Agreement and the family may suffer a hardship if they are unable to relocate or exercise portability.

## SECTION XVII. FAMILY SELF-SUFFICIENCY PROGRAM

A. Purpose. The purpose of the Family Self-Sufficiency (FSS) program is to provide supportive services which enable Section 8 HCV families to achieve economic independence and self-sufficiency. To participate in the FSS, the Household and the EHA shall enter into a contract which outlines resources and services available for the Household. The Household has special responsibilities under the FSS contract. A special escrow account is established with increased rents which would have been paid to the EHA if the Household's income is increased through suitable employment.

B. Selection of Participants.

Only Section 8 HCV participants may be selected considering the following criteria:

1. Participants who have expressed interest.
2. Fifty percent (50%) of the slots in the FSS program may be targeted to participants with one or more Household members currently enrolled or on the waiting list for one or more FSS related service programs such as Job Opportunities and Basic Skills Training (JOBS) or Jobs Training Partnership Act (JTPA).
3. Fifty percent (50%) of the FSS slots will be based on the date the Household expressed interest.
4. FSS families moving to the EHA's jurisdiction (portables) will be selected for the FSS program based on criteria selection.
5. If a Household previously participated in the FSS program with either the EHA or another authority and was terminated from the FSS Program, the Household may not be selected for participation a second time.
6. If the Household owes the EHA money in connection with Section 8 HCV assistance, they may be denied participation in the FSS Program.
7. Families shall be selected without regard to race, color, creed, religion, sex, disability, or national origin.

C. Terminating FSS and Section 8 HCV Assistance.

1. Committing program fraud, such as misrepresentation of income, assets, and deductions; misrepresentation of Household composition; or illegal activity, is grounds for termination from the Section 8 programs and the FSS program. Withholding services is not an option for the above families.
2. If the head of the FSS Household does not seek and maintain employment as specified in the FSS contract of participation or never finds employment during the contract's five year term, the Household has not met its FSS obligations and shall be terminated from the FSS program and the Section 8 HCV assistance.

3. Section 8 HCV Informal Hearing Procedures will apply to the families terminated from the Family Self-Sufficiency Program as set forth in Exhibit I hereto.

## EXHIBIT I

### **SECTION 8 HOUSING CHOICE VOUCHER PROGRAM (HCV) INFORMAL REVIEW AND HEARING PROCEDURES**

#### **INFORMAL REVIEW FOR APPLICANTS**

If an applicant is determined to be ineligible for a Section 8 program on the basis of income, Household composition or for any other reason, the applicant shall be notified promptly by letter of the determination including the reasons. The applicant shall be informed in the letter of their right to an informal review, if requested within 10 days from the date of the letter, to make written or oral objections to the EHA determination.

The review shall be conducted by any person or persons designated by the EHA, other than the person who made or approved the decision under review or a subordinate of this person.

If, after the review, the applicant is still determined to be ineligible, the applicant shall be notified in writing, including a brief statement of the reasons for the final decision. The EHA shall retain for three years a copy of the application, notice to the applicant, and the applicant's responses.

#### **INFORMAL HEARINGS FOR PARTICIPANTS**

##### **A. When a hearing is required.**

The EHA must give a participant Household an opportunity for an informal hearing to consider whether the following EHA decisions relating to the individual circumstances of a participant Household are in accordance with the law, HUD regulations, and EHA policies:

1. A determination of the Household's annual or adjusted income, and the computation of the housing assistance payment.
2. A determination on the appropriate utility allowance.
3. A decision to deny or terminate assistance on behalf of the participant because of the Household's action or inaction.
4. A determination that a Household is residing in a unit with a larger number of bedrooms than appropriate under the EHA standards together with the EHA's denial of the Household's request for an exception from the standards.
5. A determination of the Household unit size under the EHA subsidy standards.
6. A determination to terminate assistance because the participant Household has been absent from the assisted unit for longer than the maximum period permitted under EHA policy and HUD rules.

The EHA must give the opportunity for an informal hearing under items 3, 4, and 6 above before the EHA terminates housing assistance payments for the Household under an existing HAP contract.

## **B. When a hearing is not required.**

The EHA is not required to provide the Household an opportunity for an informal hearing for any of the following:

1. Discretionary administrative determinations by the EHA.
2. General policy issues or class grievances.
3. Establishment of the EHA schedule of utility allowances.
4. An EHA determination not to approve an extension or suspension of a voucher term.
5. An EHA determination not to approve a unit or lease.
6. An EHA determination that an assisted unit is not in compliance with HQS. (However, the EHA must provide the opportunity for a hearing on a decision to terminate assistance for a breach of the HQS caused by the Household.)
7. An EHA determination that the unit is not in accordance with HQS because of the Household size.
8. A determination by the EHA to exercise or not to exercise any right or remedy against the owner under a HAP Contract.

## **C. Procedure.**

The EHA must notify the Household promptly, in writing, that they may ask for an informal review which would include an explanation of the basis of the EHA's determination, and if they do not agree, the Household may request an informal hearing on the decision. The Household must submit, in writing, a request for an informal hearing within ten (10) working days of receipt of their notification of the termination. The written request is not subject to any formal format, but must include a statement as to why the decision is unfair and what relief is sought by the applicant/participant.

The informal hearing shall be conducted by an agency-appointed Hearing Officer. The Hearing Officer shall not have made or approved the decision under review or be a subordinate of the person who made the decision.

The Household shall be given the opportunity to examine, before the hearing, any EHA documents that are directly relevant to the hearing. The Household shall be allowed to copy any such document at the Household's expense. If the EHA does not make the document available for examination on request of the Household, the EHA may not rely on the document at the hearing.

The EHA shall be given the opportunity to examine at the EHA or contractor's offices any Household documents that are directly relevant to the hearing. The EHA or contractor shall be provided this opportunity before the hearing. The EHA shall be allowed to copy any such documents at their own expense. If the Household does not make the document available for

examination, the Household may not rely on the document at the hearing.

The Household may, at its own expense, have an attorney or other representative.

This is a non-judicial hearing, so no formal procedure need be followed. It is the discretion of the Hearing Officer as to how the hearing is to be conducted. However, it shall be the responsibility of the Officer to insure the adequate information is brought and that the order of the hearing proceeds as follows: The Officer shall identify the session (parties present, date, time and place), and read the initial agency determination which prompted the hearing. The Officer is to make pertinent notes and acknowledge material and testimony needed to make a reasonable determination. The need or use of an audio recording and/or a transcript of the proceedings shall be at the discretion of the Hearing Officer. However, a request by the Household for an audio taping to be done, shall be honored.

The Household has the right to present evidence and question all witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### **D. Decision.**

The decision shall be issued in writing by the Hearing Officer and shall briefly state the reasons (applicable federal regulations and program guidelines) for the particular determination. Factual determinations relating to the individual circumstances of the Household shall be based on a preponderance of the evidence presented at the hearing. A copy of the decision shall be sent to the Household by certified and first class mail, return receipt requested, within ten (10) working days after the conclusion of the hearing. If the landlord is to have a notice of the decision, it shall not contain the entire determination; but only the final decision "summary."

## EXHIBIT II

### SECTION 8 HOMEOWNERSHIP FAMILY OBLIGATIONS

This form is to be signed by the homebuyer(s) in the presence of the Encinitas Housing Authority's (EHA) staff. The EHA staff will explain any and all clauses which you, the homebuyer(s), may not understand.

The following paragraphs describe your responsibilities under the Section 8 Homeownership Program. If you or members of your household do not meet these responsibilities, through your actions or your failure to act, you may be terminated from the Section 8 Homeownership Program.

1. Family Obligations: You must comply with all Family Obligations of the Section 8 HCV program, excepting only the prohibition against owning or having an interest in the unit. Family Obligations §§ 982.551(c), (d), (e), (f), (g) and (j) do not apply to the Section 8 Homeownership Program.
2. Homeownership Counseling: All participant family members (i.e. those signing the purchase offer and loan documents) must satisfactorily complete an EHA provided or approved homeownership counseling program prior to commencement of homeownership assistance. The EHA may require any or all participant family members to attend additional homeownership counseling classes as a condition of continued assistance.
3. Purchase Contract: You must include contract conditions in any Offer to Purchase that give the EHA a reasonable time (a) to inspect the home for compliance with HUD's Housing Quality Standards; (b) to review and approve a professional home inspection report obtained by you from an EHA approved inspector; and (c) approve the terms of your proposed financing. Advise your Realtor of these requirements.
4. Mortgage Obligations: You must comply with the terms of any mortgage incurred in the purchase of the property and must notify the EHA and the EHA's Homeownership Program Counselor within five (5) days of receipt of any late payment or default notice.
5. Occupancy: You must occupy the unit as your principal residence. You may not transfer, sell, or assign any interest in the property without the EHA's prior written consent. You may not rent or lease any part of the premises without the EHA's prior written consent. You must notify the EHA in writing at least 30 days prior to moving out of the house for a period of 30 days or longer or prior to any sale, transfer, assignment, lease or other form of alienation of the assisted property.
6. Maintenance: You must maintain the property in a decent, safe and sanitary manner. You must allow the EHA to inspect the property within one-week of a demand by the EHA to conduct an inspection. You must correct any notice of deficiency issued by the EHA within the time limit specified in the notice. If you fail to adequately maintain the property, the EHA may divert the maintenance and replacement reserves portions of the Homeownership Assistance Payment to an escrow account to be used to pay for reasonable and necessary maintenance expenses.

7. Annual Reexamination: You must annually provide the EHA with current information regarding participant income and composition in a format required by the EHA.
8. Refinancing: You must notify the EHA in writing of any proposal to refinance the original purchase mortgage or of any proposal to encumber the property with secondary financing and obtain the EHA's written approval of such financing prior to executing any loan documents.
9. Default: In the event of a default on your mortgage obligation, you must cooperate with the EHA and the lender to minimize any loss to the lender in order to maintain your eligibility to continue as a participant in the Section 8 HCV program.
10. Recapture: You must sign and have recorded a lien, in a form required by HUD, securing the EHA's right to recapture a percentage of homeownership assistance provided to you upon your sale or refinancing of the home within a 10 year period after the purchase date. The amount of recapture shall be calculated in accordance with HUD regulations and shall be subject to automatic reduction in 10% increments annually beginning one year from the purchase date.

By signing below, I attest that I have read and understood my obligations as a participant in the Section 8 Homeownership Program and I agree to abide by these responsibilities. I understand that the EHA may terminate my homeownership assistance if I violate any of these obligations, but that I may request an informal review of any proposed notice of termination prior to it becoming effective.

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Participant

\_\_\_\_\_

Date

\_\_\_\_\_

Participant

\_\_\_\_\_

Date