CHAPTER 7: TENANT-BASED RENTAL ASSISTANCE

HOME permits participating jurisdictions (PJs) to create flexible programs that provide assistance to individual households to enable them to rent market-rate units. These programs are known as "tenant-based rental assistance," or TBRA. This chapter highlights eligible TBRA households and units, eligible types and levels of subsidy, options for establishing a TBRA program, and key issues for design and administration of a TBRA program.

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PART I: HOME PROGRAM REQUIREMENTS

WHAT IS TENANT-BASED RENTAL ASSISTANCE?

- ♦ Tenant-based rental assistance (TBRA) is a rental subsidy that PJs can use to help individual households afford housing costs such as rent and security deposits. PJs may also assist tenants with utility deposits but only when HOME is also used for rental assistance or security deposits.
- ♦ **Types**: There are many types of TBRA programs.
  - ➢ The most common type provides payments to make up the difference between the amount a household can afford to pay for housing and local rent standards.
    - ✓ The Section 8 Voucher Program is an example of a typical TBRA program.
  - ➢ Other TBRA programs help tenants pay for costs associated with their housing, such as security and utility deposits. (However, under the HOME Program, utility deposit assistance can only be provided in conjunction with rental assistance programs or security deposit programs.)
- ♦ **How TBRA differs**: HOME TBRA programs differ from other types of HOME rental housing activities in three key ways:

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- TBRA programs help ***individual households*** (rather than subsidizing particular rental projects).
- TBRA assistance ***moves with the tenant*** -- if the household no longer wishes to rent a particular unit, the household may take its TBRA and move to another rental property.
- The ***level of TBRA subsidy varies*** -- the level of subsidy is based upon the income of the household, the particular unit the household selects, and the PJ's rent standard (rather than being tied to the PJ's high and low HOME rents).

WHY CREATE A TBRA PROGRAM?

- PJs have developed TBRA programs for a wide variety of reasons to serve a wide range of functions.
- Some of the most common advantages of establishing a TBRA program are noted below.

Flexibility for Households

- TBRA programs offer a household the opportunity to choose its neighborhood (including the school district) as well as its type of housing (such as a single-family home, large apartment building, duplex, garden-style unit, etc.).
- If the household needs to change location, the household may take the TBRA assistance along when it moves to another rental unit.
- At the discretion of the PJ, the TBRA may be used outside of the PJ's jurisdiction.

Flexibility for PJs

- TBRA programs offer jurisdictions a way to meet fluctuating demand for housing. A PJ may elect to provide TBRA assistance to as many or as few households as it chooses, subject to its HOME budget and consistent with its Consolidated Plan.
- Also, PJs may design specialized TBRA programs tailored to the distinctive housing needs of the community. This includes programs designed specifically for persons with special needs.

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Cost-Effectiveness

- In communities where large public subsidies are needed to spur the new construction or rehabilitation of units, TBRA may be less expensive than using HOME for rehabilitation or new construction.

- TBRA may be particularly effective in communities with high vacancy rates, where the PJ wants to make units affordable, but does not want to finance the development of additional units.

Risk Avoidance

- Financing the construction or rehabilitation of housing is inherently risky. Owners and developers can (and sometimes do) default on their financing, sending projects into foreclosure and putting at risk the PJ's investment.

- Since TBRA programs are tenant-based, the PJ can terminate the assistance if the tenant fails to meet program requirements.

- TBRA poses no long-term financial obligation to the PJ.

Relocation and Displacement Assistance

- PJs may use TBRA to assist households displaced by HOME projects, facilitating the rehabilitation of occupied units.

> **One Exception: Relocation Assistance**
>
> PJs are not allowed to require households who receive TBRA as ***relocation assistance*** to participate in self-sufficiency programs.

ELIGIBLE ACTIVITIES

Rental Assistance Programs

- The HOME rules are flexible regarding the types of TBRA programs that may be developed by PJs.

  - HOME TBRA programs may be designed to serve the general objective of making housing more affordable for a wide range of low-income households within the jurisdiction.

  - PJs may want to create a TBRA program that serves the entire community in response to a high level of rent burden and/or a long Section 8 waiting list.

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- Alternately, TBRA programs may focus on a special purpose or specific housing need. Options for special purpose programs are also described below.

- **Self-sufficiency programs**: PJs may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of rental assistance.

  - For example, the PJ may operate a “bootstrap program” that provides TBRA to low-income persons who are attending job training.

- **Homebuyer programs**: HOME TBRA may assist a tenant who has been identified as a potential low-income homebuyer under a lease-purchase program. The PJ may provide HOME TBRA to these homebuyers until the purchase is completed.

  - The HOME TBRA payment must be used for monthly rental and/or utility expenses. This means that HOME-funded TBRA may not be used to create equity in the unit on behalf of the homebuyer. However, all or a portion of payments made ***by the homebuyer*** may be used to build such equity.

  - When the homebuyer is ready to purchase the unit, HOME funds may also be used for downpayment assistance.

- **Targeted populations programs**: The PJ may establish local preferences for special-needs groups within its broad, community-wide program, or it may design a specific program that exclusively serves one or more special needs groups.

  - Examples of such special needs groups may include:

    - ✓ Homeless persons;

    - ✓ Persons with disabilities; or

    - ✓ Persons with AIDS.

  - If TBRA is provided exclusively to persons with a particular type of special need, the need must be identified in the PJs Consolidated Plan as an unmet need and the preference must be needed to fill the gap in benefits and services available to such persons.

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Tenants Avoiding Displacement

Tenants who receive HOME TBRA to avoid displacement from a HOME-funded project may remain in the project or move to another suitable unit, taking the TBRA with them.

Anti-displacement assistance programs: TBRA may be used to minimize displacement associated with HOME-funded activities.

Security Deposit Programs

- The PJ may establish a program that limits assistance to help tenants with security deposits.
  - The term "security deposit" is defined by the local or state tenant-landlord law covering the jurisdiction.
  - The maximum amount of HOME funds that may be provided for the security deposit is the equivalent of two months' rent for the unit.
  - Only the tenant (***not*** the landlord) may apply for security deposit assistance.
  - The lease between the landlord and tenant may not contain certain prohibited lease provisions (see "Lease Requirements" later in this chapter) and must be in effect for at least one year.
  - The security deposit may be paid to the tenant or directly to the landlord.
  - The security deposit may be made as a grant or a loan. If the deposit is a loan, the terms of that loan, including provisions for repayment, should be set out in a written agreement between the PJ and the tenant.

Utility Deposit Assistance

Utility deposit assistance must be provided in conjunction with a TBRA security deposit or monthly assistance program. In addition, utility deposit assistance may be used only for utilities permitted under the Section 8 utility allowance. This includes electric, gas, water and trash, but does not include telephone and cable television.

Ineligible Program Activities

- Despite the flexibility the HOME Program provides for TBRA, there are a number of program activities that are ineligible for HOME TBRA assistance.

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- TBRA may not be used to assist a resident owner of a cooperative or mutual housing unit when that resident is recognized by state law as a homeowner.
    - ✓ However, under the provisions of ***some*** cooperative or mutual housing agreements, the units are considered rental housing under state law. The residents of this rental housing ***may*** receive TBRA.
    - ✓ Under any circumstance, a tenant who rents from an owner of a cooperative or mutual housing unit may receive HOME TBRA.
- HOME TBRA may not be used to prevent the displacement of tenants from projects assisted with Rental Rehabilitation Program funds.
- PJs may not provide HOME TBRA to homeless persons for overnight or temporary shelter.
- HOME TBRA may not duplicate existing rental assistance programs that already reduce the tenant's rent payment to 30 percent of income. For example, if the household is already receiving assistance under the Section 8 Program, the household may not also receive assistance under a HOME TBRA program.

ELIGIBLE APPLICANTS/BENEFICIARIES

Income Eligibility Requirements

- **Key rules**: There are two key rules regarding eligible income of households under a HOME TBRA program:
    - Low-income: HOME TBRA is limited to tenants who are at or below the HUD low-income limit. The low-income limit is defined as 80 percent or below of area median income. HUD establishes and periodically publishes this income limit by family size for each jurisdiction.
    - Funding allocation: For each fiscal year allocation, at least 90 percent of the families assisted through HOME TBRA and the households occupying assisted units in HOME rental developments (taken together) must be at or below 60 percent of area median income. This means that although the program permits assistance to households with incomes of up to 80 percent of median, the PJ will only be able to serve a ***limited*** number of households whose incomes are between 60 percent and 80 percent of median.

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- **Timing**: The PJ needs to assure that the applicant is income-eligible ***prior to*** signing a contract for TBRA for the household.

- **Family income**: For initial ***eligibility*** purposes, family income under HOME-funded TBRA programs may be calculated using one of the three definitions of annual income. (See Chapter 2: General Program Rules for information on the three definitions.)

  - The Program Administrator must determine annual income by reviewing source documents evidencing annual income (for example, wage statement, interest statement, unemployment compensation) for the family.

    - ✓ Income determinations for new TBRA recipients are valid for six months.

    - ✓ Eligibility criteria must be met regardless of the type of TBRA program operated by the PJ (for example, anti-displacement, security deposit, special needs, etc.).

TENANT SELECTION REQUIREMENTS

Overview

- PJs administering HOME-funded TBRA programs must have a written tenant selection policy that clearly specifies how families will be selected for participation in their programs. There are two major components of tenant selection -- income eligibility and preferences. Both are discussed below.

  - **Income eligibility**: As discussed previously in this chapter, households who receive HOME-funded TBRA must have an annual income that does not exceed 80 percent of the area median income.

  - **Preferences**: PJs can use HOME-funded TBRA programs to support a variety of local goals and initiatives. In fact, with the repeal of the Federal preferences in the 1999 Appropriations Act, PJs have more discretion than ever concerning tenant selection in their TBRA programs. Preferences are discussed in more detail below.

Establishing Preferences

- **General community-wide program**: A community-wide program can address the general need for affordable housing by giving more "buying power" to eligible low-income households. Within a community-wide program, the PJ may elect to:

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- Select households from the public housing authority's (PHA) Section 8 waiting list, using the PHA preference criteria; or
- Establish its own preferences and waiting list (see below).

♦ **Community-wide programs with preferences**: Through the use of local preferences, PJs can target funds to meet specific needs or serve specific purposes.

- <u>Residency preference</u>: The PJ may opt to establish a residency preference as part of its community-wide program. A residency preference requires TBRA participants to be residents of the PJ.
  - ✓ PJs may establish a residency preference as long as the application of the preference does not have the effect of discriminating on the basis of race, color, religion, sex, national origin, handicap or familial status.
  - ✓ The PJ's definition of "resident" must include persons who currently reside in the jurisdiction, and those who are currently working or have a bonafide job offer in the jurisdiction.
  - ✓ PJs may not establish a requirement for minimum length of residency.
- <u>Disabilities preference</u>: PJs may establish local preferences for all persons with disabilities within a broad, community-wide TBRA program. A PJ may also target its TBRA program to persons with a particular type of disability (see below).
- <u>Self-sufficiency program</u>: As discussed earlier in this chapter, PJs may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance. However, tenants living in a HOME-assisted project who receive TBRA as relocation assistance may not be required to participate in self-sufficiency programs.

♦ **Targeted programs**: As discussed previously in this chapter, PJs are permitted to design local selection criteria that meet the housing needs of specific populations. Below are several examples of targeted TBRA programs.

- <u>Preferences for persons with disabilities</u>: PJs may establish a preference for individuals with mental or physical disabilities.

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- ✓ Generally, TBRA and related services should be made available to all persons with disabilities that can benefit from such services (see above).
- ✓ PJs may also provide a preference for a specific category of individuals with disabilities (for example, persons with AIDS or chronic mental illness) if the specific category is identified in the PJ's Consolidated Plan as having unmet needs, and if the preference is needed to narrow the gap in benefits and services received by such persons.
- ✓ Preferences may not be administered in a manner that limits the opportunities of persons in a protected class. For example, a person given a preference under the TBRA program may not be prohibited from applying for or participating in other available programs or forms of assistance.

- ➢ Preferences for persons with other special needs: PJs may establish a preference for individuals with special needs.
  - ✓ TBRA may be provided exclusively to persons with a particular type of special need, if the specific category of need is identified in the PJ's Consolidated Plan as having unmet need and the preferences is necessary to bridge the gap in benefits and services received by such persons. Examples include the elderly and battered spouses.
  - ✓ As with a general TBRA program, appropriate, non-mandatory social services may be provided in conjunction with the TBRA.
  - ✓ As stated previously, PJs may require HOME TBRA recipients to participate in self-sufficiency programs as a condition of assistance. However, tenants living in a HOME-assisted project who receive TBRA as relocation assistance may not be required to participate in self-sufficiency programs.

ELIGIBLE TBRA UNITS

- ♦ The HOME TBRA program offers households great flexibility in selecting a housing unit. Households must be free to select the unit of their choice.
  - ➢ Public or private: Units under the TBRA program may be publicly- or privately-owned.

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- Rents must be reasonable: PJs must disapprove a lease if the PJ determines the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.
- HOME-funded units are OK: Households may select units developed or rehabilitated with HOME assistance. However, the PJ may not require the household to select a HOME unit as a condition of receiving TBRA.
  - ✓ In addition, PJs may not require TBRA-assisted households to remain in units developed/rehabilitated under HOME. Households must be permitted to move out at the end of the lease term, taking their TBRA assistance with them.
- Portability is an option**:** PJs may require eligible TBRA participants to use their TBRA assistance in units within the jurisdiction, or permit TBRA assistance to be used to rent units in other jurisdictions.

PROPERTY AND OCCUPANCY STANDARDS

Section 8 HQS

- Although the Final Rule permits flexibility with regard to the property standards used for HOME-assisted acquisition and development projects, the Section 8 Housing Quality Standards (HQS) ***must*** be used for HOME TBRA activities.
  - PJs may request waivers from HUD to permit HQS variations for local climatic or geologic conditions, or to create consistency with local codes.
  - Inspections to verify compliance with HQS and occupancy standards are made both at initial move-in and annually during the term of the TBRA assistance.

Occupancy Standards

- Program administrators must develop local occupancy standards that specify the number of bedrooms needed by households of various sizes and composition.

Further guidance on HUD occupancy standards can be found in a Federal Register Notice from December 1998 (FR-4405-N-01 dated 12-18-98).

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- **Eligible unit size:** The occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible.
  - When the household is selected for the HOME TBRA program, the PJ should counsel the household about the unit size for which the household is eligible.
    - ✓ If the household will be permitted to select a unit that is larger or smaller than the eligible unit size, the PJ should explain the impact of this choice on the tenant's payment.
    - ✓ The PJ may refer the household to appropriate units, but may not require the household to select the referral unit.

Lease Requirements

- **Term**: The term of the lease between the tenant and the owner must be ***at least*** one year, unless both agree otherwise.
- **What the lease may *not* say**: The lease ***may not*** contain the following provisions:
  - Agreement by the tenant to be sued or to admit guilt, or a judgment in favor of the owner in a lawsuit brought in connection with the lease;
  - Agreement by the tenant that the owner may take, hold or sell the personal property of household members without notice to the tenant and a court decision on the rights of the parties (this does not apply to personal property left by the tenant after move-out);
  - Agreement by the tenant not to hold the owner or its agents legally responsible for any action or failure to act, whether intentional or negligent;
  - Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant;
  - Agreement that the owner may evict the tenant (or other household members) without a civil court proceeding where the tenant has the right to present a defense, or before a court decision on the rights of the tenant and the owner;

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- Agreement by the tenant to waive a trial by jury;
- Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge a court decision; or
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in court.

♦ **Termination**: The PJ must establish standards for when a landlord may elect to terminate or refuse to renew the lease of a TBRA household. These standards must be in writing. They must also be included within the lease and/or in the contract between the PJ and the tenant.

> **Notice of Termination**
>
> The requirement for 30 days' notice of refusal to renew or termination of tenancy that is required of HOME-funded rental projects does not apply to TBRA.

PARAMETERS OF ASSISTANCE

♦ PJs are given significant flexibility in modeling the local method of providing TBRA assistance.

♦ However, HOME program rules do impose some basic parameters on the level of household and PJ payment, and the length of time for a single TBRA contract with a household.

♦ In addition, the HOME program requires that the PJ establish certain standards for the cost of the unit.

Minimum and Maximum Payment

♦ The HOME program rules establish a maximum TBRA assistance payment and require the PJ to establish a minimum tenant payment.

- Minimum tenant payment**:** The PJ may use its discretion in setting this minimum payment level. The minimum payment may be established at a dollar figure (such as $50) or at a percentage of income (such as 10 percent of monthly income).
- Maximum TBRA payment**:** The maximum amount that the HOME TBRA program may pay to assist any given household is the difference between 30 percent of the household's ***adjusted*** monthly income (see Chapter 2: General Program Rules for more information about income definitions) and a jurisdiction-wide rent limit established by the PJ (known as the payment (rent) standard).

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Length of TBRA Assistance

- HOME TBRA rental assistance contracts with individual households may not exceed two years. Contracts ***can*** be renewed, subject to availability of HOME funds.
- The two-year period begins on the first day of the lease and will end upon termination of the lease (if the TBRA payment is made directly to the landlord).
- Rental assistance contracts may be shorter than two years. For example, if TBRA is used in conjunction with a self-sufficiency program, a PJ may want to have a shorter contract term of 18 months.
- In circumstances where the payment is made directly to the tenant, the TBRA payment ends when a lease is terminated. However, payments can begin again once the household enters into a new lease.

Program Models

- Within the broad HOME Program parameters, PJs are free to design their own individual TBRA program models. Many jurisdictions have elected to model their TBRA program models on either the Section 8 Certificate or the Section 8 Voucher programs. Other PJs have developed unique program designs based upon the special needs of their communities.
- **Section 8 Certificate Program model**: Under a TBRA program modeled after the Section 8 Certificate Program, (which was recently combined with the Section 8 Voucher program), tenants pay 30 percent of their monthly adjusted income toward rent. The TBRA assistance then makes up the gap between the tenant's payment and the actual rent plus utilities for the tenant's unit.
  - The rent and utilities of the unit selected by the household may not exceed the PJ's payment (rent) standard.
- **Section 8 Voucher Program model**: Under a TBRA program modeled after the Section 8 Voucher Program, the PJ calculates the difference between 30 percent of the household's monthly adjusted income and the payment (rent) standard. This gap is then the constant amount of the monthly TBRA assistance. The household is free to select an actual unit that costs more or less than the PJ's payment (rent) standard.
  - <u>Unit costing more</u>: If the household selects a unit costing more than the payment (rent) standard, the household's

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monthly payment will exceed 30 percent of its monthly adjusted income.

- Unit costing less: If the household selects a unit costing less than the payment (rent) standard, the household's monthly payment will be less than 30 percent of its monthly adjusted income.

- Regardless of whether the unit costs are more or less than the payment (rent) standard, the monthly TBRA to the household remains fixed at the gap between what it can afford and the payment (rent) standard, regardless of the actual unit selected.

- **Individualized program models**: As stated, some PJs may decide to design an altogether new program. The most compelling reasons for electing to design a new program would be a PJ's desire to administer a security deposit-only program or a specialized program which addresses a special needs group. Within the general HOME TBRA rules, the PJ may decide how it wishes to establish limits for these types of programs.

Payment (Rent) standard

- As noted above, all PJs administering a TBRA program must establish a payment (rent) standard.

- **Characteristics**: This payment (rent) standard should represent the rent plus utility cost of moderately priced units that meet HUD HQS in the jurisdiction. The payment (rent) standard is established by bedroom size.

  - The payment (rent) standard is similar to the Fair Market Rent (FMR) that is established by HUD for the Section 8 program.

  - The FMR is established by HUD for individual jurisdictions, based upon the rent for standard units within that jurisdiction.

  - The FMR is set at the 40th percentile of these rents (that is, just below the median rent for standard units within the community).

  - In certain cases, HUD has approved a Section 8 FMR community-wide exception rent for a particular municipality, county or locality within the overall jurisdiction.

  - This approval permits rents under the Section 8 Program to go as high as 120 percent of the FMR for the jurisdiction overall.

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- HUD publishes the FMR in the Federal Register by bedroom size for each jurisdiction. The FMR is updated annually.

♦ **Establishing the payment (rent) standard**: PJs are given several options for establishing the payment (rent) standard -- including using the FMR as a basis. The PJ may develop the payment (rent) standard using one of two methods.

- First method: The PJ may develop a payment (rent) standard based on local market conditions.

  Example: The published Section 8 FMR for a two-bedroom unit is $500, but the PJ has analyzed the market and established that a reasonable price for a two-bedroom unit is $520, given the local market conditions and location. In this instance, the payment (rent) standard may be the $520.

- Second method: If the PJ does not establish its own payment (rent) standard, then the HOME payment (rent) standards must be based upon the Section 8 FMRs. The payment (rent) standard must not be less than 80 percent of the published FMRs, and not more than the FMR or area-wide exception rent.

  Example: The published FMR for a two-bedroom unit is $500, and HUD has approved a six percent community-wide exception rent of $530. The payment (rent) standard established by the PJ could be anywhere between $400 (80 percent of $500) and $530.

♦ **Administering the payment (rent) standard**: Once established the payment (rent) standard remains constant for all units for the PJ's entire program year. However, HUD does permit the PJ to have some flexibility in the administration of this payment (rent) standard.

- Unit-specific: For up to 20 percent of the units under its TBRA program, the PJ may approve a unit-specific payment (rent) standard. This unit-specific payment (rent) standard may be up to 10 percent above the payment (rent) standard established for all units.

  Example: A PJ that has 200 TBRA-assisted families could approve up to 40 unit-specific payment (rent) standards. If the established payment (rent) standard for the PJ is $400, these 40 units may each have a unit-specific payment (rent) standard of anywhere between $400 and $440.

- Although the HOME regulation does not specify the reasons for approving this unit-specific payment (rent) standard exception, a typical use of the exception authority is to:

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- ✓ Address discrepancies between the published FMR and the local market (for example, units with a large number of bedrooms rent for more than the published FMR); or
- ✓ Obtain units adapted for handicapped residents or large families that are hard to place.

♦ **Deciding the payment (rent) standard amount**: To decide the amount of the payment (rent) standard, the PJ should compare the FMR to the actual cost (including utilities) of housing in the area.

- ➢ If the FMRs are high relative to the actual cost, the PJ should consider setting the payment (rent) standard at a lower amount.
- ➢ If the FMR seems appropriate, the PJ should set the payment (rent) standard at the FMR.
- ➢ If the FMR is low relative to the actual cost of housing, the PJ may want to develop the documentation needed to establish its own payment (rent) standard based upon the market.

Ongoing Responsibilities

♦ PJs have significant on-going responsibilities for managing a TBRA program.

> **Flexibility for Security Deposit Only Programs**
>
> The requirements for ongoing income determinations and HQS inspections do ***not*** apply to security deposit only programs.

♦ **Occupancy requirements**: Primary among these responsibilities is ensuring that the property standards and occupancy requirements are still met.

- ➢ The PJ must conduct an annual inspection to ensure that the unit still meets HQS.
- ➢ The PJ must also ensure that the unit is the appropriate size for the household in order to meet the occupancy standard.

♦ **Rent increases**: The PJ must also review and approve rent increases by landlords renting to tenants participating in the TBRA program. Owners may adjust rents as leases are renewed (generally annually). The PJ must disapprove a lease if the rent is not reasonable.

♦ **Recertifying income**: In addition, the incomes of tenants receiving rental assistance must be re-examined at least

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annually using source documentation. The PJ must re-evaluate family income, size and composition.

- Rent and assistance is adjusted accordingly, based on the circumstances in effect at the time of recertification.
- If a tenant's income goes above the Section 8 low-income limit at re-examination, assistance must be terminated after the PJ gives reasonable notice to the tenant and the owner.

♦ **Tenants on Section 8 waiting list**: Special provisions are needed for tenants receiving HOME TBRA who were on the Section 8 waiting list at the time of selection.

- Households on the Section 8 waiting list when selected for HOME-funded TBRA must remain in their place on the waiting list while receiving the HOME-funded TBRA.

LEAD-BASED PAINT

♦ HUD's new consolidated Federal lead-based paint regulation took affect September 15, 2000. This regulation makes several important changes in the requirements for Federal community development programs that fund housing. For more information about lead-based paint, see the summary provided in the "Other Federal Regulations" chapter of this manual. Other resources PJs may find helpful are the training manual, *Learning the Rules: A Basic Overview of the Lead-Based Paint Regulations for CPD Programs*, the training manual, *Making it Work: Implementing the Lead Safe Housing Rule in CPD-Funded Programs*, and HUD's Office of Healthy Homes and Lead Hazard Control website, http://www.hud.gov/offices/lead.

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PART II: PROGRAM DESIGN AND IMPLEMENTATION ISSUES

There are a number of issues that PJs must consider when establishing a TBRA program. Each of these issues is discussed briefly below.

DETERMINING WHO WILL ADMINISTER THE PROGRAM

- **Public housing authorities as an option**: The cost to establish and manage a TBRA program can be great. With this in mind, many jurisdictions have elected to sub-contract the administration of their HOME TBRA programs to their PHAs. There are a number of advantages to this arrangement:
  - The PHA is likely to have in place the infrastructure to run and manage this type of program. This includes staffing, check processing equipment and systems, and paperwork processes.
  - The PHA is experienced in using Section 8 income limits to screen eligibility and conduct recertifications.
  - The PHA is also experienced in conducting HQS inspections for occupancy and housing quality.
- PJs should be aware that the PHA may want to run a TBRA program that complements or parallels its normal Section 8 program, because of unmet demand in the community (as evidenced by a long or closed waiting list) and administrative ease (due to staff familiarity with the requirements and procedures of its Section 8 program).
- The PJ, on the other hand, may wish to run a specialized program that does not meet the demand for Section 8 or is not modeled after the Section 8 program, but instead focuses on particular types of households or particular types of assistance. These special programs may be confusing for PHA staff who simultaneously manage a Section 8 program.

DETERMINING THE TYPE OF PROGRAM TO OFFER

- As noted in Part I of this chapter, the PJ may use the Section 8 housing program as the model for its TBRA program, or may

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design a wholly new program. The various options are discussed in Part I of this chapter. Here are the different arguments for each model.

- **Using the Section 8 model**: There are many arguments for using the Section 8 Rental Certificate and Voucher Programs as a model.
  - The Section 8 programs have a successful track record. Using the Section 8 model could cut the amount of time it would take to thoughtfully design a new program, which some PJs could find prohibitive.
  - If the PHA will operate the PJ's program, the Section 8 Program Voucher model can be more efficient, due to the PHA's familiarity with this program.
  - The program will likely be used by the same set of landlords who participate in the Section 8 Program. However, different rules may be confusing.
  - The rental assistance payment goes directly to the landlord under the Section 8 Program. Therefore, the landlord knows that the program's share of the rent is guaranteed.
- **Designing a new program**: The most compelling reasons for electing to design a new program would be a PJ's desire to administer a security deposit only program, or a program tailored to serve special needs populations. These options are not available under Section 8 Rental Vouchers.
  - PJs may use HOME to assist families by paying for not only monthly rent and utilities, but also security deposits and utility deposits. (Remember: under HOME, utility deposit assistance may only be provided in conjunction with a TBRA security deposit or monthly assistance program). In contrast, the Section 8 Rental Voucher Program only helps with rent and utility costs, and not security deposits or security and utility deposits.
  - The Section 8 tenant-based assistance program makes payments directly to the landlord on behalf of the tenant. By paying the tenant, the PJ allows the tenant to make a full

Caution on Security and Utility Deposit Payments

Security deposit only (or security and utility deposit only) programs are attractive because limited funds can be used to serve more families. However, they may not provide enough assistance. Many families who cannot afford the security deposit also cannot afford the monthly rental payments.

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payment to the landlord each month. The payment to the tenant gives the tenant an appearance of greater financial independence in his or her dealings with the landlord.

CALCULATING THE RENTAL SUBSIDY

- One of the most important decisions PJs must make with regard to TBRA programs is how to calculate the tenant and PJ contributions to rent.
- Three important factors affect the PJ's (and the household's) payment:
  - The family's income -- the lower the family's income, the higher the PJ's payment;
  - The payment (rent) standard the PJ establishes for each bedroom size; and
  - The cost of housing and utilities for the unit the family selects.
- In addition, the subsidy depends upon the TBRA model selected by the PJ. How to determine the subsidy under the different methods is discussed below.

Using the Section 8 Certificate Model

- The Section 8 Rental Certificate Program model assumes a fixed tenant payment.
  - The tenant's share of housing costs (Total Tenant Payment, or TTP) is calculated by formula. The PJ then pays the difference between the tenant's share and the approved rent for the unit.
  - The formula for computing TTP under the Section 8 Rental Certificate Program requires a tenant to pay the greater of:
    - ✓ 30 percent of monthly adjusted income;
    - ✓ 10 percent of monthly gross income; or
    - ✓ The welfare rent in as-paid states.
  - Exhibit 7-1 demonstrates this method.

NOTES

EXHIBIT 7-1

The Cleavers have been issued a two-bedroom HOME TBRA Coupon. Their annual (gross) and adjusted incomes are $22,500 and $18,300, respectively. They find an apartment that rents for $725 (including utilities).

The Cleavers must pay the greater of:

$458 30% of adjusted monthly income ($18,300 / 12 x 0.30)

OR

$188 10% of annual (gross) monthly income ($22,500 / 12 x 0.10)

The program administrator must pay the difference between the tenant's share and the approved rent.

Approved Rent	$725
Less Total Tenant Payment	<u>$458</u>
PJ Share of the Rent	$267

Using the Section 8 Voucher Model

- The Rental Voucher Program model assumes a fixed PJ payment.
  - The maximum PJ subsidy is calculated, and the tenant pays the difference between the subsidy and the approved rent for the unit.
  - Using the Section 8 Rental Voucher method, the PJ first establishes a payment (rent) standard for the program as a whole.
  - The PJ generally pays the difference between its payment (rent) standard and 30 percent of the tenant's adjusted monthly income. However, a minimum tenant payment is required. Exhibit 7-2 demonstrates this method.

NOTES

EXHIBIT 7-2

The Cleavers have been issued a two-bedroom HOME TBRA Coupon. Their annual and adjusted incomes are $22,500 and $18,300 respectively. As in Exhibit 7-1, their monthly annual (gross) and adjusted income amounts are $458 and $188 respectively. They find an apartment that rents for $800 (including utilities). The PJ's rent standard is $775.

The maximum program administrator subsidy is:

$775	Rent standard
<u>$458</u>	<u>(less) 30% of adjusted monthly income</u>
$317	Maximum program administrator subsidy

The Cleaver's share of the rent is:

$800	Approved rent
<u>$317</u>	<u>(less) Maximum subsidy</u>
$483	Cleavers payment

In this example, the Cleavers will pay more than 30 percent of their adjusted income for housing because they selected a unit that rents for more than the payment (rent) standard.

Had the Cleavers found a very inexpensive unit, the requirement that the family must pay at least 10 percent of monthly gross income might apply.

$500	Approved rent
<u>$317</u>	<u>(less) Maximum program administrator subsidy</u>
$183	Calculated tenant share

However, the Cleavers must pay at least 10 percent of gross monthly income

($22,500 / 12 months x 0.10 = $188).

The program administrator's contribution would be reduced by $5.

Utility Allowances

- To determine the portion of the housing cost that will be paid by the PJ and the portion that will be paid by the household, the PJ must establish a utility allowance schedule that estimates the average cost of utilities for typical types of housing (single-family, row house, high-rise, etc.) and for various utilities and fuel sources (gas, oil, electricity).
  - Utilities included in the schedule generally include those required for water/sewer, electric, gas and trash.
  - Telephone and cable TV are not considered utilities for this purpose.

NOTES

- PJs may adopt the utility allowance schedule that the PHA uses for its Section 8 program, or establish their own schedule based on a survey of typical utility costs in the area. (See Exhibit 7-3(a).)

EXHIBIT 7-3(a)

USING UTILITY ALLOWANCES

(1) The Jones family selects a unit which rents for $575. They must pay electricity and gas separately.

(2) The PJ's utility allowance schedule indicates that the average cost of electricity and gas for the unit size selected is $75.

(3) 30 percent of the family's adjusted income is $300.

(4) The family makes its tenant contribution as follows:

$75	For gas and electricity
+$225	Rent to the owner
$300	

(5) The PJ pays the difference between the rent the owner is charging and the amount paid by the tenant:

$575	Rent to owner
-$225	Paid by family
$350	Subsidy

- Sometimes PHAs must make a utility reimbursement to the family ***and*** a payment to the owner. (See Exhibit 7-3(b).)

EXHIBIT 7-3(b)

Assume that 30 percent of the Smith family's monthly adjusted income is only $50, and that the Smith family rents a unit similar to the Jones family's.

The family's $50 contribution is not enough to pay utilities (much less contribute to rent). In this case, payments are made as follows:

$50	Family retains $50 to pay utility bills
+$25	PHA pays family $25 to cover remaining utility bills
$75	Entire utility allowance
$575	PHA pays entire rent to owner

PROCESSING APPLICATIONS

- Following are the key steps in processing applications for TBRA.

NOTES

Step 1: Application Intake and Waiting Lists

- As noted above, the PJ may use the PHA Section 8 waiting list or create a waiting list of its own. Whichever method is used, the PJ must follow its written tenant selection plan, which explains how local preferences will be applied.
  - If the PJ uses the PHA's waiting list, no additional application intake is needed. The PHA will already have taken applications from families seeking rental assistance.
  - If the PJ decides to set up a separate waiting list, it will have to take applications. Good record-keeping is essential to demonstrate that all eligible families had the opportunity to apply and were treated fairly in the application process. PJs should use a written application form and retain records on the disposition of all applications.

Step 2: Eligibility Determinations

- PJs, or the PHA on behalf of the PJ, must verify all factors that relate to the family's eligibility -- the household composition, preference and income information provided by the family. The HOME rules require examination of source documents (for example, wage or interest statements) for TBRA households to determine the family’s income.

Step 3: Coupon Issuance

- Once a household is determined eligible and selected to receive assistance, the PJ issues the family a TBRA coupon. This is the family's authorization to look for housing (or to request that the PJ approve the unit in which the family already lives.)
- The PJ should establish a deadline for the family to locate housing. As a comparison, PHAs give Certificate/Voucher holders 60 days to find a unit. In extraordinary circumstances, they may extend the search period for an additional 60 days.

Step 4: Request for Unit Approval

- When the household finds an acceptable unit and a landlord willing to participate in the program, the tenant submits a request for unit approval and for using TBRA to rent the unit.
- The PJ must inspect the unit to assure that it meets Section 8 HQS and to determine if the rent the owner is charging for the unit is reasonable, based upon the rents for comparable units in the area.

NOTES

Step 5: Lease Execution and C/MI System Project Set-Up

- Once the PJ has inspected and accepted the unit and determined that the rent the owner is charging is reasonable, two actions must occur:
  - Tenant lease: The owner and the tenant enter into a lease. To cover the special requirements of the HOME program, the PJ provides a lease addendum to be used in conjunction with the owner's lease.
  - Owner agreement: The PJ and the owner enter into an agreement in which the owner agrees to comply with the HOME rules and the PJ agrees to make the PJ's share of the payment.
- At this point, the TBRA Program must be set up in the Integrated Disbursement and Information System (IDIS). Just as a PJ might set up the construction of a multi-family building as a "project" in the C/MI System or IDIS, the PJ sets up its TBRA program as a project, with up to 99 tenants listed under a single project.

USING TBRA FOR ANTI-DISPLACEMENT AND RELOCATION ACTIVITIES

- When HOME funds are used to rehabilitate rental housing, some tenants may be adversely affected.

Displacement

- In a HOME project, if post-rehabilitation gross rent (rents and utilities) exceed the tenants' TTP (as defined for the Section 8 Certificate Program), the tenant is considered ***rent-burdened***. A tenant who moves for this reason is considered displaced.
- Rent burden may exist even when a tenant occupies a unit that carries HOME rents. For example, the Low Home Rent is designed to be affordable to households at 50 percent of median income with 30 percent of their income. This rent would not be affordable to a household whose income is 40 percent of median income.
- To avoid displacement, HOME TBRA or Section 8 assistance may be provided to make the proposed rent affordable to the tenant.

NOTES

TBRA as Relocation Assistance

> **Important**: The tenant must be made aware that HOME assistance will be terminated if, upon annual recertification, the tenant's income exceeds 80 percent of area median. However, the PJ must continue to provide assistance, either as continued rental assistance payments funded through some other source, or by providing the balance of the assistance in the form of a replacement housing payment.

- ♦ HOME TBRA may be offered to displaced low-income tenants as an alternative to the replacement housing payment required by the Uniform Relocation Act (URA) or Section 104(d). URA rules require that displaced tenants be given the choice of TBRA or a cash replacement housing payment. Section 104(d) gives the option to the PJ, but if the PJ offers TBRA and the tenant prefers a replacement housing payment, the tenant may receive the replacement housing payment at URA (rather than Section 104(d)) levels.
- ♦ In this case, the value of the monthly HOME TBRA must be equal to or greater than the monthly value of the tenant's replacement housing payment.
- ♦ Tenants who accept HOME TBRA must be assured of at least 42 months of assistance when the URA applies and 60 months of assistance when Section 104(d) applies.