



# Department of Commerce

Innovation is in our nature.

## HOME TENANT-BASED RENTAL ASSISTANCE (TBRA) PROGRAM GUIDELINES Effective June 1, 2017

### I. Authorization

This program is authorized under the provisions of Title II of the Cranston-Gonzalez National Affordable Housing Act, which established the HOME program. The HOME program is implemented through the United States Department of Housing and Urban Development (HUD) and is subject to the requirements of Section 24, Part 92, of the Code of Federal Regulations (24 CFR 92). Program information and forms can be found on the HUD website at:

<https://www.hudexchange.info/home/topics/tenant-based-rental-assistance/#templates-and-forms>

### II. Program Overview

The Tenant Based Rental Assistance (TBRA) Program provides targeted, very low-income households with utility, deposit, and rent costs for up to two years. If a household is unable to leave the program after two years, their assistance may be renewed if funding allows.

### III. Eligible Activities and Costs

- A. Reasonable planning, administrative and staffing expenses associated with operating a TBRA program. Such expenses are subject to the 7.5 percent limitation on administrative costs. TBRA administrative costs are considered general management, oversight, and coordination under 24 CFR 92.207(a).

The cost of housing inspections and determining income eligibility are normally charged as administrative costs. However, if it can be shown that charging these costs as project costs is advantageous, the grantee may do so and must document the basis of the costs and receive prior approval from Commerce.

- B. Up to 24 months of rent assistance per household to help pay the costs of monthly rent and utilities. A household may continue to receive assistance after 24 months if necessary and funding allows.
- C. Security deposits, regardless of whether the Contractor is providing on-going tenant-based rental assistance.
- D. Utility deposit assistance, **only** in conjunction with either rental assistance or a security deposit program.
- E. Combining TBRA with Other Programs
  - 1. Use with Other Subsidies

TBRA assistance may be used for households participating in other subsidy programs, but **ONLY** when the other program does not provide sufficient assistance to lower a household's rental payment to 30 percent of income. In such cases, TBRA may be provided as

supplemental assistance to further reduce the household's rent payment to 30 percent of income.

## 2. Self-Sufficiency Programs

Grantees may require TBRA recipients to participate in self-sufficiency programs as a condition of *selection* for tenant based rental assistance. The household's failure to continue participation in the self-sufficiency program cannot be grounds for terminating the assistance, but *renewal* of the assistance can be conditioned on participation in the program. (Grantees may not require persons with disabilities to participate in medical or disability-related services as part of the self-sufficiency program).

## IV. Ineligible Activities

- A. Project-based rental assistance. Households must be free to use the assistance in any eligible unit.
- B. Rental assistance to a household receiving rental assistance under another Federal program, or a state or local rental assistance program, if the TBRA subsidy would result in lowering the household's rent and utility costs to less than 30% of the household income.
- C. Assisting resident owners of cooperative housing that qualifies as home ownership housing. Cooperative and mutual housing may qualify as either rental or owner-occupied housing under the TBRA Program, depending upon the provisions of the agreement applying to the unit. A household renting from a cooperative unit owner may only use TBRA.
- D. Preventing displacement or providing relocation assistance to households as a result of non-federally funded activities. TBRA funds may be used only as relocation assistance for federally-funded activities.
- E. Providing TBRA rental assistance for overnight or temporary shelter. The TBRA subsidy must be sufficient to enable the household to rent a transitional or permanent housing unit that meets Housing Quality Standards (HQS).
- F. Move-in costs and credit checks.
- G. Case management or support services.
- H. Utility deposits without rental assistance.
- I. Payment of rent arrearages.
- J. Allowing the "portability" of TBRA outside of the jurisdiction of the Contractor.
- K. Any costs that are the responsibility of the tenant and are not included in the TBRA subsidy calculation and written tenant agreement.

## V. Eligibility for Assistance

### A. Income-Eligibility

Participating households may have gross incomes up to 50% of median income for the area being served. Contractors must use the Annual Income definition at 24 CFR 5.609. Incomes of participating households must be verified before assistance is provided and re-examined annually

thereafter. Income limits are established by household size and revised annually by the Department of Housing and Urban Development (HUD). Current income limits are at <https://www.hudexchange.info/programs/home/home-income-limits/>.

**B. Target Populations**

Households must fit within the target populations as identified in the Contractor’s current TBRA Program Description packet as submitted and approved by Commerce.

**C. Eligibility Verification and Documentation**

1. Eligibility must be verified and documented by local program staff annually.
2. The only acceptable method of verifying income is for staff to review source documents evidencing annual income for the household. Examples of acceptable source documents include, but are not limited to, wage statements, interest statements, unemployment compensation statements, and third party written verification directly from the information source, i.e., employer, DSHS Benefits Verification System, Employment Security, etc.
3. Eligibility requirements other than income may be verified using four acceptable methods, in order of preference:
  - a. **Written:** The staff person gets third party written verification directly from the information source, i.e., employer, DSHS, Employment Security, etc.
  - b. **Oral:** If verification is oral, the staff person must initiate the conversation, and document the conversation in the client file. This documentation should include the name, telephone number, and position/title of the third party, the date and time of the conversation, and the name and signature of the person requesting the verification.
  - c. **Documented:** This type of verification is used when the information desired does not require verification by a third party, such as birth certificates, documentation from other agencies (with identifying marks or letterhead) or social security cards.
  - d. **Self-Declared:** Client written statements or affidavits are acceptable only when other verifications are not available. Since this method is self-serving, it should be viewed with caution and accepted only as a last resort.
4. Verification of homelessness includes the following:

<b>Situation</b>	<b>Documentation</b>
Persons living on the street or in short-term emergency shelter	Information should be obtained to indicate that the participant is living on the street or in short-term emergency shelter. This may include names of organizations or outreach workers who have assisted them in the past, whether the client receives any general assistance checks and where the checks are delivered, or any other information regarding the participant's activities in the recent past that might provide documentation. If unable to verify that the person is living on the street or in short-term emergency shelter, the participant or a staff person may prepare a short written statement about the participant's previous living place. The participant should sign the statement and date it.
Persons coming from transitional housing for homeless persons	Obtain written verification from the transitional housing staff that the participant has been residing at the transitional housing facility. The verification should be signed and dated by the referring agency personnel. Also obtain written verification that the participant was living on the streets or in an emergency shelter prior to living in the transitional housing facility (see above for required documentation for emergency shelter), or was discharged from an institution or evicted from a private dwelling prior to living in the transitional housing and would have been homeless if not for the transitional housing (see below for

	required documentation for eviction from a private dwelling).
Persons being evicted from a private dwelling	<p>Obtain evidence of formal eviction notice indicating that the participant was being evicted within a week before receiving homeless assistance. Also obtain information on the participant's income and efforts made to obtain housing and why, without the homeless assistance, the participant would be living on the street or in an emergency shelter.</p> <p>If the participant's family is evicting, a statement describing the reason for eviction must be signed by the family member and dated. In other cases where there is no formal eviction process, persons are considered evicted when they are forced out of the dwelling unit by circumstances beyond their control. In those instances, obtain a signed and dated statement from the participant describing the situation. The contractor must make efforts to confirm that these circumstances are true and have written verification describing the efforts and attesting to their validity. The verification should be signed and dated.</p>
Persons from a short-term stay (up to 30 consecutive days) in an institution who previously resided on the street or in an emergency shelter	Obtain written verification from the institution's staff that the participant has been residing in the institution for less than 31 days and information on the previous living situation. See above for guidance.
Persons being discharged from a longer stay in an institution	Obtain evidence from the institution's staff that the participant was being discharged within the week before receiving homeless assistance. Obtain information on the income of the participant, what efforts were made to obtain housing and why, without the homeless assistance, the participant would be living on the street or in an emergency shelter.
Persons fleeing domestic violence	Obtain written verification from the participant that he/she is fleeing a domestic violence situation. If a participant is unable to prepare verification, the grantee/recipient may prepare a written statement about the participant's previous living situation for the participant to sign and date.

## VI. Tenant Selection

- A. The Contractor's local policies and procedures must include a written tenant selection policy that clearly specifies how families to be assisted will be selected.
- B. TBRA recipients who also have applied for Section 8 assistance retain, for the purpose of the Section 8 waiting list, any tenant selection preference for which they qualified at the time TBRA was provided. For example, a Section 8 applicant who qualified for a tenant selection preference because the family was living in substandard housing would continue to qualify for this preference, even after receiving TBRA in a standard dwelling. This policy enables families to receive TBRA without jeopardizing their opportunity to receive Section 8 assistance. Contractors must have a procedure for ensuring that local Housing Authorities are aware of this rule. Contractors must also obtain confirmation that the TBRA participant is on the Section 8 waiting list. If the Section 8 waitlist is closed then the agency should note that in the file.

## VII. Unit Selection Approval

### A. Unit Type

Coupon holders may select units that are publicly or privately-owned. However, TBRA may not be provided to a family who proposes to rent a unit that receives project-based rental assistance through federal, state or local programs, if the TBRA assistance would lower the household's rent and utility costs to less than 30% of the household income.

### B. Rent Reasonableness

Units must rent for a reasonable amount, compared to rents charged for comparable, unassisted units. Contractors must document the basis of their rent reasonableness determinations, using the Rent Reasonableness Checklist and Certification form or comparable form. Although

documentation of three comparable units is preferable, in some rural areas this may be difficult or impossible. In these cases, comparable units from neighboring communities are acceptable if the rents are similar. Documentation of fewer than three units is also acceptable with a written explanation.

A rental lease must be disapproved if the rent is not reasonable, based on rents charged for comparable unassisted units.

### C. Housing Quality Standards (HQS)

All units must meet Section 8 Housing Quality Standards (HQS). Inspections must be made at initial occupancy before lease signing and annually during the length of assistance. There is no requirement that HQS inspectors be certified, but public housing authorities are required to have a training program. HQS inspection training may be available through your local housing authority. The inspection form is located in TBRA Forms on the Commerce website.

If tenants are occupying a unit owned by the contractor, the unit must be inspected by a third party.

As of January 1, 2013, units must comply with the Washington State Carbon Monoxide Alarm Laws (RCW 19.27.530 (2009) and Chapter 132 Laws of 2012 (SSB 6472)). Alarms must be located outside of each separate sleeping area, in the immediate vicinity of the bedroom and on each level of the residence. Single station carbon monoxide alarms must be listed as complying with UL 2034, and installed in accordance with code and the manufacturer's instructions. Combined CO and smoke alarms are permitted.

### D. Lead Based Paint

HUD Lead Regulation 24 CFR Part 35, Subpart M, applies to the TBRA program. **The regulation only applies to structures built before 1978 that house children under the age of six.** Please consult the regulation itself to make sure that your agency implements this regulation fully and properly.

#### 1. Evaluation

Contractors must conduct a visual assessment of a unit prior to occupancy and at least annually thereafter. The visual assessment identifies deteriorated paint, dust, debris, and other residue. The visual assessment must be done by a person who is trained in visual assessment.

#### 2. Paint Stabilization

The property owner must correct any conditions identified in the HQS inspection, including stabilizing deteriorated paint identified in the visual inspection. Paint stabilization can involve repairing the substrate, scraping and repainting the surface. All deteriorated paint must be stabilized by properly trained or supervised workers using lead-safe work practices. Documentation of safe work practices is required, and consists of having copies of certificates of safe work practices training completion on file for those doing the lead reduction work.

When work is complete, the Contractor must ensure that the unit passes clearance and keep a copy of the clearance report. Failure to get clearance on any unit where lead hazard reduction activities have occurred results in rental assistance being discontinued for the unit. Keep

records of any unit where clearance is required but has not been obtained to insure that the unit does not become rent assisted, even if another eligible household wants to live there.

### 3. Communication with Residents

The Contractor must ensure that residents receive the following communications:

- **Lead Hazard Information Pamphlet.** The resident must receive this pamphlet prior to occupying the unit. If the Contract can document that the resident received the pamphlet previously (e.g. from the owner), the Contractor is not required to provide the pamphlet again but the receipt must be documented.
- **Lead Disclosure Notice.** Residents must also receive, from the owner, a Lead Disclosure Form notifying them of any known lead-based paint or hazards in the unit, prior to occupying the unit.
- **Notice of Lead Hazard Reduction.** Within 15 days of the completion of the paint stabilization and clearance, the resident must receive a Notice of Lead Hazard Reduction.
- **Notice of Lead Hazard Evaluation.** Because a visual assessment is not a method of lead hazard evaluation, a notice of lead hazard evaluation is not required. However, if any lead hazard evaluation is conducted, for example in the event of a child with an Environmental Intervention Blood Lead Level (EIBLL), such a notice is required and must be posted at the applicable work site.

### 4. Ongoing Maintenance

The owner is required to conduct ongoing maintenance in units occupied by residents with children under age six receiving TBRA. The Contractor must monitor those efforts as part of periodic inspections.

### 5. Environmental Intervention Blood Lead Levels

Check with the local or state health department at least quarterly for a list of children with elevated blood lead levels in their service area. This must be cross-checked with the addresses of your rental assistance units in which children reside. Keep the documentation from these quarterly contacts on file.

The Contractor and property owners must take specific steps after receiving notice that a child with EIBLL is living in a unit receiving TBRA.

- a. **Requirements.** The Contractor must take required steps when it receives notification of a child with an EIBLL. These steps include:
  - Verify and report the information to the state or local public health agency;
  - Conduct a risk assessment within 15 calendar days;
  - Respond to the evaluation result. If lead hazards are identified, then interim controls or abatement must be done within 15 calendar days of the risk assessment using Safe Work Practices, and clearance is required. Otherwise the unit will cease to be certified; **and**
  - Provide notices to residents.
- b. **Activities before Notification.** If the Contractor begins evaluation and lead hazard reduction activities after a child's blood level is tested, but before being notified of the

child with an EIBLL, the Contractor must finish these activities, but does not need to repeat them.

- c. **If a Child Moves.** If a child with an EIBLL moves before the Contractor has completed the risk assessment and lead hazard reduction measures, the Contractor must ensure that these measures are completed, and the unit must be certified free of lead-based paint hazards before the unit will be eligible for assistance.

#### 6. Reimbursable Expenses

Risk assessments, paint inspections, clearance, or training are reimbursable with TBRA administrative funds only. There are no TBRA funds available for lead hazard reduction. The burden to pay for lead reduction work is on the building owner.

#### 7. Other

- a. **TBRA Application.** The TBRA application must ask about any children under six years old.
- b. **Resources.** It is recommended that each contractor identify a local risk assessor and clearance technician that can be called upon when needed. It is also recommended that each contractor identify a local company or two that is trained and certified to do lead hazard reduction work.

#### E. Occupancy Standards

Contractors should develop occupancy standards that specify how the number of bedrooms needed by a household is established. Section 8 Housing Quality Standards (HQS) include a basic occupancy standard of two persons per living/sleeping area. The basic standard can be modified to take into consideration specific household composition and circumstances, for example:

- Permitting/requiring/prohibiting young children of the opposite sex to share a bedroom;
- Not requiring different generations of the same sex to share a bedroom; **or**
- Providing for less than two persons per living/sleeping area in the case of medical necessity.

Occupancy standards are used to determine the unit size for which the household is eligible and thus, the amount of assistance to be provided. Fair housing rules permit a household to select smaller units that do not create seriously crowded conditions. Participants may also select larger units, but the contractor is not required to increase the subsidy to cover the increased costs of a larger unit.

In conjunction with the annual re-examination of income, the Contractor should re-examine the household's size and composition to determine whether the current unit is still suitable and appropriate.

### VIII. Income, Payment Standards, and Rent

- A. Annual Income is the gross amount of income that a household anticipates to receive during the coming year. Contractors are required to examine at least two months of source documentation (e.g., wage statements, interest statements, or unemployment compensation documentation) when determining household income for all potential TBRA beneficiaries. Income must be counted for all adult persons in the household, including nonrelated individuals.

B. Adjusted Income is a household's annual income less mandatory deductions, as follows:

1. \$480 for each dependent [defined as a member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age or is a full-time student].
2. \$400 for any elderly family or disabled family.
3. The sum of the following, to the extent the sum exceeds three percent of annual income:
  - Unreimbursed medical expenses of any elderly family or disabled family; and
  - Unreimbursed reasonable attendant care and auxiliary apparatus expenses of each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus.
4. Any reasonable childcare expenses necessary to enable a member of the family to be employed or to further his or her education.

C. The contractor must set a payment standard for each unit size based on the number of bedrooms. The grantee can either use local market conditions or base the rent standard on those established in 24 CFR part 982, which govern Section 8 Housing Choice Voucher Program.

The payment standard determination is an important one. If the payment standard is set too low in comparison to the actual cost of modest, standard housing in the community, coupon holders may be unable to find housing. If the payment standard is set too high, the Contractor may provide more subsidy than is needed and therefore not make the best use of its limited TBRA funds.

The TBRA Program gives Contractors two choices for setting the payment standard:

1. The Contractor can base the rent standard on those established in 24 CFR part 982, which govern the Section 8 Housing Choice Voucher Program. These rules include the following language at 982.503(b)(1)(i): The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size.
2. Because HUD's FMR market areas are quite large, the published FMR may be dramatically high or low for a specific jurisdiction within the FMR area. For this reason, the TBRA Program offers Contractors a second option for establishing the payment standard. The Contractor may establish the payment standard at any level (higher or lower than the FMR), based upon its own market analysis. To exercise this option, the Contractor must document the results of its market analysis.

D. Contract Rent is the rent charged by the owner.

E. Utility Allowance is the estimated average monthly cost of utilities to be paid by the tenant, separately from rent to the owner. A Contractor may use the utility allowance for the Section 8 program or establish its own schedule of allowances.

F. Gross Rent is the contract rent plus the applicable utility allowance.



## IX. Calculating the Subsidy

### A. Introduction

Funding regulations specify that the subsidy can be no greater than the difference between a Contractor-established payment standard and 30 percent of the household's adjusted monthly income. The Contractor must also establish a minimum household contribution, which can be expressed as a dollar amount or a percentage of income. Generally, the minimum household contribution should be expressed in percentage terms. Establishing a flat dollar amount for the minimum payment is not recommended because this policy has the effect of imposing a hardship on families with the lowest incomes.

Contractors can use the following Rental Certificate or Voucher models for subsidy calculations, or can establish their own methodologies for calculating the subsidy, provided the method conforms to the basic regulatory requirements and is written into their local policies and procedures.

The two methods described in this section represent different philosophies for providing assistance. The Rental Certificate model offers a predictable household contribution and specifically limits the rent the owner may charge. The Rental Voucher Model leaves more to the discretion of both the household and the contractor, but also involves more risk for households.

### B. The Rental Certificate Model: A Predictable Tenant Share and Limit on Contract Rent

The Rental Certificate model assumes (1) a fixed tenant payment, and (2) a Contractor established maximum rent the owner can charge. In this model, the household's share of housing costs (called Total Tenant Payment or TTP) is calculated by formula. The household pays the greatest of 30 percent of monthly-adjusted income or 10 percent of monthly gross income. The Contractor pays the difference between the Total Tenant Payment and the approved gross rent and utilities for the unit. Exhibit 2 demonstrates this method.

<b>Exhibit 2 – Calculating Tenant and Contractor Payments Using Rental Certificate Model</b>			
The Smiths have been issued a two-bedroom TBRA Coupon. Their annual adjusted income is \$18,300. They find a unit that rents for \$725 and includes all utilities.			
The Smith's must pay the greater of:		The Contractor must pay the difference between the tenant's share and the approved rent.	
\$458	30% of adjusted monthly income ( $\$18,300 \div 12 \times 0.30$ )	Approved Rent	\$725
		Less Total Tenant Payment	<u>\$458</u>
\$188	10% of gross monthly income ( $\$22,500 \div 12 \times 0.10$ )	Contractor Share of the Rent	\$267

Under this option, the rent the owner may charge is limited by the Contractor in two ways. First, the Contractor must determine that the rent is reasonable in comparison to the rent charged for comparable, unassisted units. Second, the gross rent cannot exceed the Contractor's payment standard for the appropriate unit size. The Contractor may establish an exception rent policy that would enable the Contractor to approve higher gross rents up to 10 percent above the payment standard for up to 20 percent of the units assisted. The exception rent policy should clearly state the circumstances in which the exception rent will be approved.

The Rental Certificate model is based on an assumption that an appropriate contribution toward housing costs is 30 percent of monthly-adjusted income for all households. The household's share of the rent will never exceed the amount required by the formula. For example, if the owner raises the rent in the second year of the TBRA contract and the household's income has remained the same, the entire increase would be paid by the Contractor.

If the household finds a unit that rents for more than the payment standard, the unit must be rejected unless an exception is approved. Under this option, households do not have the choice of paying an amount higher than is required by the formula in order to rent a more expensive unit.

#### C. The Rental Voucher Model: Fixed Contractor Share and a Flexible Tenant Share and Contract Rent

The Rental Voucher model assumes a fixed Contractor payment. The maximum subsidy is calculated by subtracting 30 percent of the participant's monthly-adjusted income from the Contractor's payment standard. The household pays the difference between the maximum subsidy and the gross rent for the unit, even if this amount is *more or less than 30 percent* of monthly-adjusted income. A minimum household payment of 10 percent of monthly gross income is required.

Using this model, the rent charged by the owner must be reasonable, but is not limited by the payment standard. The model offers the household flexibility in the percentage of income it contributes to housing costs, and in the cost of the unit selected.

- If the household selects a unit with a gross rent that is less than the payment standard, the household will pay less than 30 percent of its adjusted income.
- If the household selects a unit with a gross rent that is more than the payment standard, the household will pay more than 30 percent of its adjusted income.

Although the added flexibility of this model is attractive to many households, it also involves risks. For example, a household may decide to select a unit that requires a monthly payment equal to 35 percent of monthly-adjusted income even though this stretched the household budget. If in the second year of the TBRA contract the owner raises the rent and the Contractor does not raise its payment standard, the household's share of the rent would be increased to an even higher percentage. Exhibit 3 demonstrates this method.

### Exhibit 3 – Calculating Tenant and Contractor Payments Using Rental Voucher Model

The Smiths have been issued a two-bedroom TBRA Coupon. Their annual adjusted income is \$18,300. They find an apartment that rents for \$800 (including utilities). The Contractor’s Rent Standard is \$775.

The maximum contractor subsidy is:	The Smith’s share of the rent is:
\$775 rent standard	\$800 approved rent (+ utilities)
<u>\$458</u> (less) 30% of adjusted monthly income	<u>\$317</u> (less) maximum subsidy
\$317	\$483

#### D. Other Contractor Options

As noted above, adopting either the Rental Certificate model or the Voucher model is the simplest way for the Contractor to comply with TBRA rules. However, Contractors interested in accomplishing specific outcomes can adopt other methods of computing the amount of subsidy. For example, within the TBRA rules the Contractor could establish:

- An expected household share that is greater than 30 percent;
- A higher or lower minimum household contribution than the 10 percent of gross income specified for the Section 8 Program; **or**
- A lesser term than 24 months for the subsidy.

Generally, the minimum household contribution should be expressed in percentage terms. Establishing a flat dollar amount for the minimum payment is not recommended because this policy has the effect of imposing a hardship on families with the lowest incomes.

#### E. Impact of Unit Size on the Subsidy

The Contractor must establish a policy with respect to how the subsidy will be calculated if the household leases a unit with more or fewer bedrooms than authorized by the Contractor. As a comparison, under the Rental Voucher model, the subsidy is calculated based upon the unit size authorized, regardless of the size selected by the household. This means that a household that selects a smaller unit (that still meets HQS) may reap a significant savings, and the household that selects a larger unit than needed will generally be required to pay more than 30 percent of adjusted income.

Alternatively, under Rental Certificate model, the Fair Market Rent for the size authorized is used if the coupon holder selects a larger unit, and FMR for the size the coupon holder selects, if they select a smaller unit. Contractors can elect to follow either rule, or adjust the payment standard to the unit size the household has selected in all cases. Exhibit 4 illustrates the impact of this policy.

**Exhibit 4 – Impact of Unit Size Selected on the Payment Standard**

	<b>Tenant Selects Larger Unit</b>	<b>Tenant Selects Smaller Unit</b>
<b>Certificate Model</b>	Use Payment Standard for unit size authorized	Use Payment Standard for selected unit
<b>Voucher Model</b>	Use Payment Standard for authorized unit	Use Payment Standard for authorized unit

1. When a Larger Unit is Selected

The Smith family has been authorized a two-bedroom TBRA Rental Assistance Coupon (payment standard \$350); 30 percent of the household’s adjusted monthly income is \$150. The family selects a three-bedroom unit that rents for \$375.

- a. Using the Certificate model, the family would be unable to select this unit unless the Contractor approved an exception rent. If the Contractor did so, the family would pay \$150 and the Contractor would pay \$225. (The cost of the rent above the Payment Standard is borne by the Contractor.)
- b. Using the Voucher model, the Contractor would pay \$200 (Payment Standard minus monthly adjusted income) and the family would pay \$175. (The cost of the rent above the payment standard is paid by the family, not the Contractor.)

2. When a Smaller Unit is Selected

The Jones family has been authorized a two-bedroom TBRA Rental Assistance Coupon (payment standard \$350); 30 percent of the household’s adjusted monthly income is \$150. The family selects a one-bedroom unit that rents for \$275 (payment standard \$300).

- a. Using the Certificate model, the family would pay \$150 and the Contractor would pay \$125. (Thus the savings for the smaller unit benefits the Contractor, not the family.)
- b. Using the Voucher model, the Contractor would pay \$200 (payment standard minus 30 percent of adjusted income); the family would pay \$75. (The savings for selecting the smaller unit benefits the family, not the Contractor).

F. Adjusting for Tenant-Paid Utilities

The Contractor must consider how utilities will be paid. The household’s contribution is intended to cover both rent and utilities. If all utilities are included in the rent, the household’s entire contribution goes to the owner. However, this is rarely the case. Most households pay separately for at least some utilities. In such cases, the Contractor must determine how much of the household’s contribution should go to pay utilities and how much to the owner.

Contractors 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 (natural gas, propane, electricity, etc.). Utilities included in the schedule generally are those required for water/sewer, cooking, heating, lighting, and trash collection. Telephone and cable TV are not considered utilities for this purpose. Contractors may use the utility allowance schedule that housing authorities use for the Section 8 Program or establish a separate schedule. Exhibit 5 illustrates how the utility allowance is used.

### Exhibit 5 – Using Utility Allowances

The Brown family’s annual adjusted income is \$12,000; their monthly-required contribution is \$300 (12,000 divided by 12 months x .30). The family selects a unit that rents for \$575; the Contractor determines the rent for the unit is reasonable. Gas and electricity must be paid separately.

1. The Contractor utility allowance schedule shows the average cost of electricity and gas for the unit size and housing type selected as \$75.

2. The family makes its tenant contribution as follows:

\$300	30% of adjusted income
-\$75	allowance for gas and electricity
\$225	Total Tenant Contribution

3. The Contractor pays the difference between the rent the owner is charging and the amount paid by the tenant:

\$575	Rent to Owner
-\$225	Paid by tenant
\$350	Contractor subsidy

Sometimes Contractors must make a utility reimbursement to the household, as well as a payment to the owner. This occurs whenever the household’s share of housing costs is insufficient to cover expected utility costs. Exhibit 6 illustrates this phenomenon. **(Contractors must not send the reimbursement amount directly to the utility without the permission of the tenant.)**

### Exhibit 6 – Utility Reimbursements

Sally Green’s annual adjusted income is \$2,000; the monthly-required contribution is \$50 (2,000 divided by 12 months x .30). She selects a unit that rents for \$575; the Contractor determines the rent for the unit is reasonable. Gas and electricity must be paid separately.

The Contractor’s utility allowance schedule shows the average cost of electricity and gas for the unit size and housing type selected as \$75.

The full tenant contribution is used to pay gas and electricity. The tenant makes no contribution to contract rent.

The Contractor pays:

\$575	Rent to owner
\$ 25	Utility reimbursement to tenant (\$75 utility allowance-\$50 tenant contribution)
\$600	Contractor subsidy

#### G. Limitations on the Amount of Subsidy Provided

1. The subsidy provided by the Contractor may not exceed the difference between a payment standard established by the Contractor and 30 percent of the household’s monthly-adjusted income.

2. Contractors must establish the minimum household contribution, expressed as a percentage of either gross or adjusted income, or a flat rate.
3. Security and utility deposits must be “reasonable” (e.g. not more than two months’ rent) and consistent with local market practices.
4. Each subsidy contract cannot exceed two years. However, assistance on behalf of an individual household can be extended under subsequent contracts if the Contractor continues to administer a TBRA program and has funds available.

## **X. Deposit Assistance**

Deposits may be provided as a loan or grant. Contractors can decide to provide security and utility deposit assistance to all eligible applicants or require a separate determination of need. Security deposit payments may be made to the household or the owner; utility deposits to the household or the appropriate utility company. If offered as a loan to the household, the Contractor must execute a repayment agreement with the household to assure repayment at the end of the program participation. Returned funds are treated as program income, and must be reinvested in other TBRA-eligible activities. State or local laws governing deposits (e.g., with respect to paying or accruing interest) apply, as well as the TBRA program requirements.

### **A. Security Deposits**

The amount of security deposit paid should be based upon local market practice. However, the maximum amount of a security deposit is the equivalent of two months’ rent for the unit. Only the prospective tenant, not the owner, may apply for TBRA security deposit assistance.

In lieu of security deposits, the Contractor may, at its discretion, assume liability for damages and other allowable costs in an arrangement with the property owner. The Contractor should carefully consider whether it wishes to assume potential liability for damages and other allowable costs. Payment of the security deposit limits Contractor liability and decreases potential administrative follow-up action associated with owner claims. Housing authorities can provide valuable information about the advantages and disadvantages of being involved in unpaid rent and damage claims.

### **B. Utility Deposits**

Utility deposits may be made in conjunction with the provision of rental assistance or security deposit programs, but cannot be operated separately as a “stand alone” program. Utility deposits may be paid for any of the tenant-paid utility services included on the utility allowance schedule. This includes fuel for cooking, heating and lighting (electric, gas, propane, etc.), and water/sewer and trash collection, if not provided as a city service, but does not include telephone or cable deposits.

## **XI. Program Implementation**

### **A. Required Program Forms**

- Application
- Rental Assistance Coupon
- Request for Unit Approval
- Rent Reasonableness Checklist/Certification
- HQS Inspection
- Rental Assistance Contract
- Lease Addendum

These forms have been developed using Section 8 program forms as a model. They can easily be adapted for either subsidy model or the Contractor's own program design. The Contractor's counsel should review these formats to assure that they are not in conflict with local laws and that they adequately reflect the Contractor's design.

### **B. Key Processing Steps (Summarized in Exhibit 7)**

#### **Affirmative Marketing and Outreach Activities**

Contractors must activate their affirmative marketing policies for the TBRA program. HUD requires that every Contractor take specific actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. Contractors must develop procedures for informing and soliciting applications from persons in the housing market area who are not likely to apply for the TBRA program without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies). Please see 24 CFR 92.351 for more information.

#### **Outreach to Prospective Owners**

The willingness of owners to participate in the TBRA program significantly affects the options and opportunities available to coupon holders. Contractors should conduct outreach to owners of rental property to stimulate their interest in the program. Mailing program notices to owners using tax or PHA records as sources, and participating in meetings of owner and realtor associations are often effective outreach methods.

#### **Housing Quality Inspection**

Each unit must be inspected to confirm that it meets Section 8 HQS. If the unit initially fails HQS, the owner may be given a reasonable amount of time to correct deficiencies, or the coupon holder may elect to look for another unit. Generally speaking, an agreement with the owner should not be executed until the owner has made all repairs. (An exception may be made for corrections to defective exterior paint during the winter in climates where the weather makes this impossible.) The results of each inspection should be recorded on an HQS inspection form and retained in the household's file.

## Rent Reasonableness

The rent for each unit must be determined to be reasonable when compared to comparable, unassisted units. The chart below highlights key components of the comparability analysis. A sample format for determining rent reasonableness is provided in TBRA Forms on the Commerce website. The following issues should be considered when determining rent comparability:

- Location – in many markets location is the key determinant of housing price.
- Size – only units of comparable size (both in terms of number of bedrooms and square footage should be used.
- Utilities included – consider the type and fuel source of utilities.
- Condition – only units in similar condition should be compared.
- Amenities – consider such amenities as garage, appliances, and lot size.

## Tenant Lease and TBRA Rental Assistance Contract

### a. The Lease

The TBRA household and the rental unit owner or designee must enter into a lease that shall continue until: (1) the lease is terminated by the landlord in accordance with state landlord/tenant laws; (2) the lease is terminated by the tenant in accordance with the lease or by mutual agreement; or (3) termination of the HOME Rental Assistance Contract by the program administrator. The term of the lease between the household and the owner must be for not less than one year, unless the tenant and the owner mutually agree upon another term.

If, on the termination of the lease, the landlord and tenant agree to continue the lease on a month-to-month basis, that must be documented.

The Contractor must assure that the owner's lease does not include any of the HUD-prohibited lease provisions (24 CFR 92.253). The HUD Lease Addendum provides some protection against prohibited lease provisions, but a staff person must review every property owner's lease for compliance with TBRA program rules and HUD requirements. Another option would be to require all owners to use an agency-generated lease.

### b. TBRA Rental Assistance Contract

Per 24 CFR Part 92.209: *“Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME **funds may not exceed 24 months**, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. **For a rental assistance contract between a participating jurisdiction and an owner**, the term of the contract must terminate on termination of the lease.

On the termination date of the lease, the landlord and tenant may agree to continue the lease on a month-to-month basis. In a situation where the lease continues month-to-month, the rental assistance contract must still be renewed after 24 months.



## Financial Records

Contractors should maintain their financial records in such a manner that is easily possible to summarize subsidy amounts provided by household and by owner. Contractors must report to the Internal Revenue Service annually the amount of rental income paid to owners.

<b>Exhibit 7 - Processing Steps</b>
<b>AFFIRMATIVE MARKETING AND OUTREACH</b> Publicly announce availability of TBRA Outreach to prospective applicants Outreach to prospective owners
<b>APPLICATION</b> Accept application Initial screening Place apparently eligible applicants on waiting list Notify ineligible applicants
<b>ELIGIBILITY DETERMINATION</b> Select households based upon preference Verify household preferences, composition, income Notify ineligible applicants
<b>COUPON ISSUANCE</b> Conduct briefing for coupon holders Issue coupon Provide assistance to coupon holder during search
<b>REQUEST FOR UNIT APPROVAL</b> Applicant/owner submit request Contractor conducts HQS inspection Contractor reviews owner lease
<b>EXECUTION OF DOCUMENTS</b> TBRA Rental Assistance Contract TBRA Lease Addendum (with tenant/owner lease)
<b>PAYMENTS BEGIN</b>

## XII. Program Administration

Execution of key program documents and the start of subsidy payments is the end of one important phase of TBRA, but only the beginning of another. For the full term of the TBRA contract, the Contractor has important operational responsibilities.

## A. Annual HQS Unit Inspections

The TBRA Program regulation requires that all units assisted with TBRA funds meet Section 8 HQS. Each unit under contract must be inspected, at least annually, to assure that this requirement is met. Units may also be inspected as a result of housing quality complaints initiated by the owner or the tenant.

If a unit fails to pass in inspection, the owner may be given a reasonable period of time (e.g., 24 hours for emergency conditions or 30 days for less serious conditions) to correct the deficiencies. If the owner fails to make the needed corrections, the Contractor has several options. The Contractor may, with adequate notice to the owner and household, terminate the TBRA Rental Assistance Contract and require the household to move to another location in order to continue to receive assistance. The Contractor may also temporarily suspend its payments until the owner remedies the HQS deficiencies. (Note: If this second approach is taken, the household should be encouraged to continue to pay its share of the rent in order to prevent eviction.)

All lead based paint requirements must be met, including the tracking of all units housing children under the age of 6, and checking with the local or State Department of Health for a list of children with elevated blood lead levels.

## B. Annual Eligibility Determinations

Each household's eligibility to participate in the program and its share of the rent must be confirmed annually. If a participating household's income exceeds the HUD Income Limit the household's assistance must be ended. In order to assure that the re-examination is completed on time and that adequate notice is given to both the owner and tenant of changes in the household's eligibility or share of the rent, the re-examination process should begin 60 – 90 days in advance of the household's one-year anniversary date.

Using the same basic procedures described in Part V to determine the household's initial eligibility and share of the rent, the contractor must re-verify household size, composition, and income. A contractor may exclude from annual income certain increases in the income of a disabled member of families who receive TBRA assistance in order to further their economic self-sufficiency. These include annual income increases that result from:

- The employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- Increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- New employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families, as determined by the contractor in consultation with the local agencies administering temporary assistance for TANF and Welfare-to-Work programs. The TANF program is limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance – provided that the total amount over a six-month period is at least \$500.

These exclusions from income are of limited duration. The full amount of the increase is excluded for the cumulative twelve-month period beginning on the date the disabled family member is first employed or the family first experiences an increase in annual income attributable to employment. During the second cumulative twelve-month period, the contractor is required to exclude from

annual income fifty percent of any increase in income. The disallowance of increased income of an individual family member who is a person with disabilities is limited to a lifetime 48-month period.

The Section 8 program provides for interim re-determinations of income if the household's circumstances change between annual re-examinations. Since the TBRA Program regulation is silent on this point, Contractors may develop their own policies.

#### C. Processing Requests for Rent Increases

Typically, owners offer leases that specify the rent for one year. This means that, unless the Contractor has negotiated a two-year rent, most owners will request a rent increase at the end of the first year of the contract. The Contractor must again determine that the proposed rent is reasonable in comparison to rents charged for comparable, unassisted units, and also that it is within any other limitations established in the Contractor's program.

For the Section 8 program, HUD publishes annually an Annual Adjustment Factor that is used to adjust contract rents. Contractors may use this Annual Adjustment Factor, available from most housing authorities, to determine the maximum allowable contract rent increase or develop its own standard for rent increases based upon a market analysis.

#### D. Moves and Termination of Tenancy

Contractors should, as a minimum, require that owners comply with local tenant-landlord ordinances and may impose additional requirements. Other requirements should be imposed only when the Contractor has a specific reason for intervening in the tenant-landlord relationship. The Contractor should also have a written policy about how any termination of tenancy will affect the household's TBRA assistance.

Tenants may elect to move to another unit, as permitted by the lease. The TBRA Rental Assistance Contract contains provisions that terminate the Contractor's agreement with the owner when the household moves out. To assure that subsidy is not paid on units no longer occupied by an eligible household, the Contractor should require households to give advance notice of their plans to move out, and owners to inform the Contractor when tenants move out.

A household who wishes to move may be issued another coupon following the same procedures used to issue the original coupon. However, the Contractor must make it clear to the household and the new owner whether the household is entitled to receive assistance only for the balance of months remaining in its original contract, or for another initial assistance period.

#### E. Local Policies and Procedures

##### 1. Minimum Requirements

Contractors must develop, and make available to Commerce upon request, local program policies and procedures that include, at a minimum:

- The forms of assistance offered (rent, security deposits, and utility deposits.)
- The targeted population(s).
- A tenant selection policy.
- Occupancy standards.
- The payment standard.
- The methodology for calculating subsidies.

- The agency's marketing approach.
- A policy on termination and denial of assistance.

## 2. Policy Updates

It is recommended that the Contractor review annually key program operating procedures to determine if revisions are required. At a minimum, the Contractor should assess the appropriateness of its payment standards and utility allowance schedule. Changes to either should be implemented in an equitable fashion. This may be done by making the changes effective for all participating households immediately, or at each household's next annual re-examination.

### F. Outreach and Success Rates

The Contractor should analyze participant success rates, and make use of the results to determine if aspects of program design could be changed to improve the success rate. For example, if most of those who fail to make use of the coupon are households requiring large units, it may be that the Contractor's payment standard for such units is too low. Similarly, if minority families disproportionately require time extensions in order to find acceptable units, the Contractor may need to increase marketing to potential owners and review the briefing process to ensure that all applicants are receiving high-quality information and know how to file fair housing complaints.

### G. Administrative Efficiency

Contractors should review the length of time that various aspects of the TBRA program take, including the time between initial application and coupon issuance, and between coupon issuance and lease-up.

While many factors can affect these periods, this information can give clues about ways to improve the administrative efficiency of the program. For example, if the time between coupon issuance and lease-up is lengthy, it could be attributable to slow HQS monitoring procedures, poor communication with property owners, or slow paperwork processing, all of which are within the Contractor's control.

Similarly, if applicants are on the waiting list for significant periods before assistance is available, the Contractor may need to expand the program in the future, or tailor its eligibility requirements more narrowly.

## **XIII. Estimating the Contract Budget**

### A. Developing the TBRA Budget

Program implementation begins with a budget. Contractors that know the amount of the TBRA allocation must determine *how many* TBRA coupons that amount will support. Conversely, Contractors that know how many families they want to assist with the TBRA program must determine *how much* total funding will be required.

In either event, the process begins with two key pieces of information: (1) the estimated cost for rent and utilities for the housing that is likely to be used by coupon holders; and (2) the estimated average income of households which are expected to participate. With this information, the Contractor can estimate its average, per household subsidy. The simple model below (exhibit 8) illustrates this concept.

<b>Exhibit 8 – Conceptual Budget Model – An Example</b>	
Given: \$500 Fair Market Rent (a proxy for market housing costs)	
	\$13,000 Average Annual Gross Income \$12,000 Average Annual Adjusted Income
Per Household Cost:	
\$500	Fair Market Rent
<u>-300</u>	<u>\$12,000 (adjusted income) divided by 12 months x .30</u>
\$200	Contractor monthly per household cost
\$200/month x 24 months = \$4,800 per household cost \$4,800 x 50 families = \$240,000 estimated total costs	
or, conversely if the Contractor has budget only \$200,000:	
\$200,000 divided by 4,800/household = 41 households can be assisted	

**B. Adding Refinements and Complexity**

Although the conceptual model shown above provides a rough estimate of the costs for a TBRA program, a more refined estimate requires each Contractor to consider the following factors:

- Actual housing costs: Exhibit 9 uses the FMR as the estimate of the average rent (including utilities) for units that will be selected for TBRA. FMRs often are not a good indicator of housing cost because of the wide areas for which FMRs are developed. Contractors should use the best available planning data and Section 8 program experience to estimate housing costs.

The simple example also does not make any assumptions about rent increases (and resulting increased subsidy payments) in the second year of the subsidy contract. Remember, under the Option 1 subsidy model, the Contractor absorbs any increase in rent if the household’s income remains the same. Under Option 2, both the household and the Contractor may be responsible for a portion of any rent increases.

- Variations in housing cost and household income by bedroom size: The example above did not make any assumptions about the bedroom size requirements of the households to be assisted. Nor did it refine household income data by household size. Developing budget estimates by bedroom size helps achieve better accuracy.
- Length of subsidy contract: Exhibit 9 assumes that each subsidy contract will be 24 months. Some Contractors, especially those coordinating their TBRA programs with self-sufficiency programs, have specified a lesser period than 24 months. Remember, no subsidy contract can have a term of more than 24 months.
- Impact of Security/Utility Deposits: If the Contractor will provide security and/or utility deposit assistance, the budget must reflect these expenditures. The Contractor may elect to provide deposit assistance for all or some recipients, based upon need.
- Need for contingency allowance: Even with these refinements, the contractor should set aside some additional cushion to cover errors in the estimating process. However, it is also important to note there may be some “built-in” contingency because some families may not complete the 24 months due to personal circumstances such as moving out of the jurisdiction.

**Exhibit 9** provides a more detailed approach to estimating the budget for a TBRA program.

	<b>Number of Bedrooms</b>				
	0-1	2	3	4	5+
(1) Estimated Housing Cost <sup>1</sup>					
(2) Monthly Adjusted Income x 0.30 <sup>2</sup>					
(3) Estimated Monthly Subsidy Cost to the Contractor [(1) minus(2)]					
(4) Enter Number of Months (Length of Subsidy Contract)					
(5) Total Per Household Cost [(3) x (4)]					
(6) Enter Number of Families to be Assisted					
(7) Basic Cost by BR size [(5) x (6)]					
(8) Enter Inflation/Contingency Amount [Use 1.xx format] <sup>3</sup>					
(9) Adjusted Costs by BR Size [(7) x (8)]					
(10) Per Household Deposit Cost <sup>4</sup>					
(11) Total Deposit Costs [(10) x (6)] <sup>5</sup>					
(12) Total Cost by BR Size [(11) + (9)]					

## **XIV. Commerce Requirements and Administration**

### **A. Contractor Eligibility**

1. Eligible applicants are units of local government, public housing authorities, and nonprofit community-based organizations assisting households in areas throughout the state
- Applicants must have prior experience administering a state or federal rental assistance program, unless an experienced entity has agreed to mentor the applicant for the term of the contract.
3. Any number of applicants may apply for funds for the same county; however, Commerce will award only contract per county. We recommend that interested parties located in the same county meet to decide who will carry the contract if funds are awarded.

### **B. Contractor Responsibilities**

1. Set up and administer the TBRA program in accordance with State and Federal rules and regulations. Submit all required reports and information to Commerce within specified timeframes, including entering client data in the HMIS system per Exhibit B of these guidelines if you've elected to use HMIS for HOME TBRA
2. Keep up-to-date on any program changes or revisions, and implement them;
3. Enter into written agreements with subcontractors (as needed);
4. Distribute TBRA funds to all subcontractors;
5. When subcontractors are involved, collect all required reporting forms and information from subcontractors and submit them to Commerce within specified timeframes;
6. Annually monitor terms of the subcontracts to ensure timely expenditure of funds and balanced service provision, ensure the program is administered correctly according to all applicable rules, regulations and contracts, and review the accounting practices of participating programs that do not have an independent audit;
7. Ensure all funds are spent according to the contract; and
8. Spend no more than 7.5% of the grant amount on administrative costs.

### **C. Eligible Expenses**

Program income, when generated, shall be used first by the Grantee before drawing additional funds to complete activities included in the Grantee's TBRA application.

Amounts received under this contract may not be used to replace other amounts made available or designated for use for the purposes of the TBRA grant.

1. Administration

Administration includes reasonable costs of overall program management, coordination, monitoring and evaluation. Reimbursement for administration costs may not exceed 7.5 percent of the grant amount. Any unused funds set aside for administration costs may be used for rental assistance or deposit costs. The cost of housing inspections and determining income eligibility are normally charged as administrative costs. However, if it can be shown that charging these costs as project costs is advantageous, the grantee may do so and must document the basis of the costs.

2. Rental Assistance

Rent assistance includes up to 24 months of rent assistance per household to help pay the costs of monthly rent and utilities.

3. Deposit Assistance

Deposit assistance includes security deposits, regardless of whether the Contractor is providing on-going tenant-based rental assistance and utility deposits, only in conjunction with either rental assistance or a security deposit program.

D. Billing Procedures

Contractors must bill Commerce on a monthly basis for reimbursement of allowable actual costs, using the Commerce TBRA Voucher Distribution form. Payment will be made upon receipt of all required documents and reports, though an Electronic Fund Transfer (EFT) to the Contractor. In order to receive reimbursement, Contractors must also submit the TBRA Set-Up Report on a monthly basis. Failure to submit a monthly invoice within a timely manner will result in delayed or withheld payment.

E. Financial Management Systems

The contractor must maintain copies of all reimbursement requests and backup documentation from subcontractors. The contractor must maintain records that disclose all costs allowable for reimbursement.

F. Reports

The contractor is responsible for submitting required reports by the dates due using required forms.

<b>Report</b>	<b>Due Date</b>
Voucher Distribution	Monthly on the 20 <sup>th</sup> of the month following provision of services except in July, when a due date will be sent.
TBRA Set-up Report	Monthly on the 20 <sup>th</sup> of the month following provision of services, with the Voucher Distribution, unless contractor uses HMIS



## G. Budget Revisions

The TBRA approved budget is outlined on the Contract Face Sheet. Budget revisions are subject to the following parameters:

1. Increases to the contract amount of up to ten percent (10%) can be made by amendment by Commerce alone.
2. The contractor may make budget revisions of up to ten percent (10%) of the total budget without an amendment. Funds may be transferred between the Rental Assistance, Security/Utility Deposit or Administration categories as long as Administration never exceeds 7.5 percent of the total contract amount. A description of the budget change(s), including the amount(s) transferred, must be submitted to Commerce prior to submitting expenditure reports reflecting the revisions.

## H. Monitoring

Commerce will monitor TBRA contractors through data and documentation collected in the monthly vouchering process, periodic program reports, and periodic on-site monitoring. Contractors will also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

## I. Performance Measures

Contractors must perform services defined in the Contractor's TBRA Program Descriptions for the contract period, with amendments, if any; in accordance with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments. Commerce reserves the right to modify the terms of the performance standards, measures, and outcomes by contract amendment at any time for the duration of the term of the contract.

### 1. Expenditures

Commerce shall review the contractor's expenditures as reported on the monthly TBRA invoices and compared to the contractor's expenditure projections. If a contractor fails to expend TBRA funds at the projected rate, the contractor may be asked to submit a written explanation. Commerce may accept the explanation and require an updated budget that reflects the contractor's ability to spend down the grant by June 30, or choose to reduce any future requests for funding.

### 2. Unexpended Funds

The level of funds reduction for failure to meet performance standards, outcomes or expenditure projections shall be negotiated between Commerce and the contractor, with Commerce retaining the authority to set the reduction level. Any unused funds will first be reallocated to other TBRA contractors and then placed in the HOME General Fund for use in all HOME programs.

### 3. Repayments

TBRA funds used to assist households who do not meet the eligibility requirements, or to lease units where an inspection has not been completed, or the rent is not reasonable, must be repaid to Commerce.

#### J. Recordkeeping

The Contractor must establish and maintain the following records, among others, and make them available to Commerce upon request:

- Documentation of household eligibility and certification of household income.
- Documentation of compliance with HQS, including lead-based paint requirements; that the unit met HQS standards at the time the family occupied the unit; and that the rent is reasonable.
- Records on racial and ethnic groups and single heads of households by gender or other such information that HUD from time to time might require.
- Records that document eligible matching contributions as outlined in 24 CFR 92.
- An administrative plan that describes all policies and procedures necessary for the administration of the TBRA program. If a contractor is currently administering a Section 8 Rental Assistance program, the contractor may reference the Section 8 Administrative Plan where policies and procedures for the TBRA program are identical to those used in the Section 8 program. The Section 8 Administrative Plan must be up-to-date and approved by HUD.
- Records that document compliance with affirmative action and nondiscrimination requirements.

#### K. Environmental Review

Because the proposed project involves the provision of rental assistance to private landlords on behalf of tenants. It is exempt from the National Environmental Policy Act (NEPA) requirements of 24 CFR 58. There are no circumstances that require compliance with laws and authorities in 24 CFR 58.5; therefore, the project is found to be exempt pursuant to Section 58.34(a)(10). Commerce has certified that the proposed project is exempt from NEPA and SEPA requirements (RCW 43.21C.110).

#### L. Changes to Guidelines

Commerce may issue revised or new guidelines at any time. All contractors will be sent revised copies as they are published.

## Appendix A

### BVS Requirements

#### Consent to Review Information in the Benefits Verification System

- All household members must provide informed consent for lead/subgrantees to review confidential information in the Benefits Verification System (BVS) on the form **DSHS 14-012(x)(REV 02/2003)**. This form must be kept in the client file.

#### Benefits Verification System and eJAS Data Security Requirements

The words and phrases listed below, as used in this Contract, shall each have the following definitions:

- a. “CSD” means the Community Services Division of the Economic Services Administration within DSHS.
- b. “Data” means the information that is disclosed or exchanged as described by this Contract and includes all Data defined in the term Confidential Information.
- c. “Data Provider” means the entity that is disclosing their Data for use by the Data Recipient for completion of this Contract.
- d. “Data Recipient” means the entity that is receiving the Data from the Data Provider for purposes of completion of this Contract.

#### 1. **Purpose.**

The purpose of this Contract is to:

- a. Allow the Contractor’s Housing Program Providers access to the Benefit Verification System (BVS) Housing Profile to verify public assistance eligibility and improve access to housing assistance for recipients of CSD programs.

The housing assistance programs include, but are not limited to:

- Emergency Solutions Grant (ESG)
- Consolidated Homeless Grant (CHG)
- Independent Youth Housing Program (IYHP)
- Shelter to Housing Program (SHP)
- Tenant-Based Rental Assistance (TBRA)
- Housing for Persons with HIV/AIDS (HOPWA)

## 2. **Statement of Work**

The Contractor shall provide the services and staff, and otherwise do all things necessary for, or incidental to the performance of work as set forth below:

- a. The Contractor will work with the DSHS contact listed on page one (1) of this Contract to ensure personnel who specifically require access to the Data in the performance of their assigned duties, are granted access to the appropriate BVS Housing Profile in accordance with the terms and conditions of this Contract.

## 3. **Consideration**

- a. DSHS will provide the information under this Contract at no charge to the Contractor.
- b. Each party to this Contract shall be responsible for any expenses incurred in providing or receiving the Data.

This includes any costs for hardware/software upgrades, and costs to improve any systems or processors that will enable the Contractor to access the Data.

- c. In exchange for the receipt of Data, the Contractor agrees to abide by the Terms and Conditions in this Contract.
- d. The Contractor shall be responsible for any charges for Data loss.

## 4. **Data Sharing.**

- a. Purpose:

(1) Activity for which the Data is needed:

To allow the Contractor's Housing Program Providers to verify public assistance eligibility, improve access to housing assistance for recipients of CSD programs, and improve HEN Referral program efforts.

- b. Description of Data

(1) Data Elements:

(a) The Housing Profile consists of the following BVS data elements:

- i. Client First Name
- ii. Client Middle Initial
- iii. Client Last Name
- iv. CSO, HCS, or HCA office
- v. Living Arrangement
- vi. Month of the Year (up to the past 12-months)
- vii. Program Type
- viii. Household Number
- ix. DSHS Benefit
- x. Earned Income
- xi. Unearned Income
- xii. WorkFirst Sanction Amount

xiii Intentional Overpayment Amount

xiv. HEN Eligibility

(2) Time frames(s) for Data disclosure or exchange:

The duration of the Contract or as amended.

(3) Conditions under which, if any, that Data disclosed or exchanged can be linked to other data:

There are no conditions that permit linking of the Data with other data.

c. Data Access or Transfer

(1) Method.

(a) The Contractor shall access information via the DSHS BVS secure website.

(b) Access to this website requires the user to have an email address approved by DSHS. DSHS will provide the initial password and the strong password must be changed to a unique strong password.

(2) Requirement for Access.

(a) Access to data shall be limited to the Contractor, who specifically requires access to the Data to perform their assigned duties.

(b) The Contractor shall provide the DSHS Contact listed on page one (1) of this Contract, with the names, email addresses, and other contact information as required by DSHS, for all Contractor personnel requesting BVS access.

(c) The Contractor must report within one (1) business day to the DSHS Contact person listed on page one (1) of this Contract after receiving notice that any Contractor personnel with access to the Data is terminated from employment or when their job duties no longer require access to the Data.

(d) Prior to making Data available to their personnel, the Contractor shall notify all personnel of the use, confidentiality, and nondisclosure requirements.

(e) The Contractor shall complete and sign a DSHS Notice of Nondisclosure form and agree to adhere to the use and disclosure requirements before accessing the Data.

(f) The signed DSHS Notice of Nondisclosure forms shall be maintained by the Contractor and be submitted to DSHS upon request.

(3) Frequency of Exchange.

Daily Access

d. Limitations on Use of Data

(1) The Contractor will access client information specific only to the Contractor's caseload.

- (2) CSD is the sole authority for any BVS system changes, suspension to BVS access, or BVS data enhancements.
- (3) If the Data and analyses generated by the Data Recipient contain personal information about DSHS clients, any and all reports utilizing this Data shall be subject to review and approval by the Data Provider prior to publication in any medium or presentation in any forum.
- (4) Any and all reports using confidential DSHS data must have all personal identifying information removed.

## 5. Confidentiality and Nondisclosure

- a. Both parties may use Personal information and other information or Data gained by reason of this Contract only for the purposes of this Contract.
- b. Neither party shall disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal information, without the prior written consent of the person to whom the Personal information pertains.
- c. The Data to be shared under this Contract is confidential in nature and is subject to state and federal confidentiality requirement that bind the Contractor to protect the confidentiality of the personal information contained in Economic Services Administration data. The Contractor may use personal data and other data gained by reason of this Contract only for the purpose of this Contract.
- d. The Contractor shall maintain the confidentiality of personal data in accordance with state and federal laws, and shall have adequate policies and procedures in place to ensure compliance with confidentiality requirements, including restrictions on re-disclosure. The Contractor agrees to keep client information according to DSHS policy and procedures.
- e. Neither party shall link the Data with Personal information or individually identifiable data from any other source, nor re-disclose or duplicate the Data unless specifically authorized to do so in this Contract or by the prior written consent of the other party.
- f. The Contractor shall take reasonable precautions to secure against unauthorized physical and electronic access to client data, which shall be protected in a manner that prevents unauthorized persons, including the general public, from retrieving data by means of computer, remote terminal, or other means.
- g. Contract Suspension:

DSHS may take certain actions in the event the Contractor is investigated by a local, county, state, or federal agency, for a matter which DSHS determines may adversely affect the access to or use of, Data provided under this Contract. DSHS May, without prior notice, suspend the access to or use of Data, and disallow the person(s) involved in the allegation(s) from providing services or having contact with clients pending final resolution of the investigation.

## 6. Disputes

Either party may submit a request for resolution of a Contract dispute (rates set by law, regulation, or DSHS policy are not disputable). The requesting party shall submit a written statement identifying the issue(s) in dispute and the relative positions of the parties. A request for a dispute resolution must include the Contractor's name, address, and Contract number, and be mailed to the address listed below within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue in dispute.

DSHS/Community Services Division/Attn: Contracts Unit  
PO Box 45440  
Olympia, WA 98504-5440

All other terms and conditions of this Contract remain in full force and effect.

## Appendix B

### Data Collection Directives

**If you've elected to use HMIS, please follow these guidelines:**

#### **Client Records and Record Retention**

Lead and Sub Grantees must enter a record for every client served with CHG and HOME TBRA funds in the state homeless data warehouse (usually referred to as "HMIS") or in a local data collection system that meets HUD/HMIS data standards. The client record may contain personally identifying data or it may not, depending on whether the client provided informed, written consent to have their identifiers stored in HMIS. As a general rule, Commerce does not want personal identifiers for any client who identifies themselves as a victim of domestic violence, sexual assault, dating violence or stalking.

Agencies must develop and adopt policies governing the retention of paper records containing personally identifying information derived from a Homeless Management Information system. The policy must define how long paper records are retained after they are no longer being actively utilized, and the process that will be used to destroy the records to prevent the release of personally identifying information. The policy must require the destruction of the paper records derived from an HMIS no longer than seven years after the last day the person was served by the organization.

#### **Funding Decisions & Data Collection**

Lead Grantees must not make funding or resource allocation decisions of CHG and HOME TBRA funds based on whether a Sub Grantee enters *personal identifiers* for victims of domestic violence, sexual assault, dating violence or stalking or other clients who have not provided informed, written consent. The intent of this guideline is to ensure that clients do not feel coerced into providing consent to share data at any time in any local jurisdiction receiving CHG and HOME TBRA funds and participating in HMIS.

Data quality is of high concern for purposes of accurate reporting out of HMIS. Commerce recommends that local jurisdictions continue to strive for increased data quality including 1) monitoring completeness of required data elements and 2) monitoring responsible use of HMIS at local agencies. Some suggestions for how to appropriately include data quality in HMIS as a part of local funding decisions include, but are not limited to:

1. Completeness of required data elements:
  1. Exclude clients who "refused consent" from the equation  
e.g.: Instead of  $\frac{\# \text{ NULL values}}{\text{All client records}} = \%$  use  $\frac{\# \text{ NULL values}}{\text{Clients who DIDN'T refuse consent}} = \%$
2. Responsible use of HMIS at local agencies:
  2. Develop a "baseline" rate of "refused consent" locally using HMIS data



3. Determine each agency's rate of "refused consent" as a % deviation from the standard
4. Add or subtract points for less or more deviation from the standard rate, depending on reasonableness
5. Further training, technical assistance, or other guidance may be more appropriate in this situation instead of, or in addition to, penalties assessed during funding competitions

All local jurisdictions interested in including a measure of HMIS data quality as part of a local funding decision for CHG and HOME TBRA funding are required to submit a proposal to Commerce for final approval prior to being used in local applications/competitions for funding.

**Informed Consent** – According to RCW 43.185C.180, personally identifying information about homeless individuals for the Washington homeless client management information system may only be collected after having obtained informed, reasonably time limited, (i) written consent from the homeless individual to whom the information relates, or (ii) telephonic consent from the homeless individual, provided that written consent is obtained at the first time the individual is physically present at an organization with access to the Washington homeless client management information system. Safeguards consistent with federal requirements on data collection must be in place to protect homeless individuals' rights regarding their personally identifying information. Data collection under this subsection shall be done in a manner consistent with federally informed consent guidelines regarding human research which, at a minimum, require that individuals receive: (i) information about the expected duration of their participation in the Washington homeless client management information system; (ii) an explanation of whom to contact for answers to pertinent questions about the data collection and their rights regarding their personal identifying information; (iii) an explanation regarding whom to contact in the event of injury to the individual related to the Washington homeless client management information system; (iv) a description of any reasonably foreseeable risks to the homeless individual; and (v) a statement describing the extent to which confidentiality of records identifying the individual will be maintained.

#### **Personal Identifiers – "Personally Identifying Data"**

Individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, could include:

- a. A first and last name;
- b. A home or other physical address;
- c. Contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- d. A social security number; and
  - a. Any other information, including date of birth, racial or ethnic background, or religious affiliation that, in combination with any other non-personally identifying information, would serve to identify any individual collecting "non-identified" client records.

## Data Entry for “Non-identified” Client Records

1. Leave the “Name” fields NULL (blank). Do not write in names *such as “Anonymous” or “Refused” as that will compromise data quality at the state level.*
2. *If there are no personal identifiers* for a client record, there needs to be an “Agency Unique ID” of some sort created and stored in the system that can be used by the agency to access the record at a later time (and should not be an algorithm of elements that can lead to the client’s identification).
3. Enter an approximate year of birth – subtract or add one to three years to the actual year of birth.
4. Enter “Refused” for gender, race, and ethnicity when the real answers to those questions, in combination with other data, can potentially lead to identification of the client.
5. Enter any additional answer to the universal, program-specific and optional data elements (from the March 2010 HMIS Data Standards) only if the answers to those questions, in combination with other data, will not lead to the identification of the client.
6. Program Entry Date, Program Exit Date and Service Date are generally required unless those elements can be used in combination with other elements to identify the client. If this is the case, please enter an approximate Program Entry Date, Program Exit Date and Service Date by adding one to three months to the actual dates and keeping the “Length of Stay” (the number of days between program entry and program exit) consistent with reality. Keeping the approximate service date, if used, within the actual service date’s reporting period is also recommended.

Submitting data to the state data warehouse – If a Lead or Sub Grantee is not entering data directly into the state data warehouse, the data being entered into the local HMIS must be submitted on a quarterly basis no later than the 10<sup>th</sup> day following the end of each quarter to the state data warehouse via the HUD Standard 3.0 XML schema.

## Appendix C

### Agency Partner HMIS Agreement

The Homeless Management Information System (“HMIS”) is a client management system that maintains information regarding the characteristics and service needs of Clients for a variety of reasons, including the provision of more effective and streamlined services to Clients and the creation of information that communities can use to determine the use and effectiveness of services.

Ultimately, when used correctly and faithfully by all involved parties, the HMIS is designed to benefit multiple stakeholders, including provider agencies, persons who are homeless, funders and the community through improved knowledge about people who are homeless, their services and service needs and a more effective and efficient service delivery system.

The Homeless Housing and Assistance Act of 2005 requires the Department of Commerce to collect HMIS data in the form of a data warehouse. Each homeless service provider will submit HMIS data to Commerce.

Agency and the Department of Commerce agree as follows:

#### 1. General Understandings:

- a. In this Agreement, the following terms will have the following meanings:
  - (i) "Client" refers to a consumer of services;
  - (ii) "Partner Agency" refers generally to any Agency participating in HMIS.
  - (iii) “Agency staff” refers to both paid employees and volunteers.
  - (iv) “HMIS” refers to the HMIS system administered by Commerce.
  - (v) “Enter(ing)” or “entry” refers to the entry of any Client information into HMIS.
  - (vi) “Shar(e)(ing),” or “Information Shar(e)(ing)” refers to the sharing of information which has been entered in HMIS with another Partner Agency.
  - (vii) “The Balance of State Continuum of Care Steering Committee” or “Steering Committee” refers to a Commerce advisory body that serves in a consultative and counseling capacity to Commerce as the system administrator. The Steering Committee is comprised of representatives from the State, the Balance of State Continuum of Care regions and at large members.
  - (viii) “Identified Information” refers to Client data that can be used to identify a specific Client. Also referred to as “Confidential” data or information.
  - (ix) “De-identified Information” refers to data that has specific Client demographic information removed, allowing use of the data *without identifying* a specific Client. Also referred to as “non-identifying” information.

- b. Agency understanding that when it enters information into HMIS, such information will be available to Commerce staff who may review the data to administer HMIS; to conduct analysis in partnership with the Research and Data Analysis (RDA) division at the Department of Social and Health Services (DSHS); and to prepare reports that may be submitted to others in de-identified form *without* individual identifying client information.
- c. Agency understands that Agency will have the ability to indicate whether information Agency entered into HMIS may be shared with and accessible to Partner Agencies in HMIS system. Agency is responsible for determining and designating in HMIS whether information may or may not be shared.

## 2. Confidentiality:

- a. Agency will not:
  - (i) enter information into HMIS which it is not authorized to enter; and
  - (ii) will not designate information for sharing which Agency is not authorized to share, under any relevant federal, state, or local confidentiality laws, regulations or other restrictions applicable to Client information. By entering information into HMIS or designating it for sharing, Agency represents that it has the authority to enter such information or designate it for sharing.
- b. If Agency is a “covered entity” whose disclosures are restricted under HIPAA (45 CFR 160 and 164) or is subject to Federal Drug and Alcohol Confidentiality Regulations (42 CFR Part 2), a fully executed Business Associate or Business Associate/Qualified Service Organization Agreement must be attached to this agreement before information may be entered. Sharing of information will not be permitted otherwise. More information about “covered entities” can be found here:  
<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/index.html>.
- c. If Agency is subject to any laws or requirements which restrict Agency’s ability to either enter or authorize sharing of information, Agency will ensure that any entry it makes and all designations for sharing fully comply with all applicable laws or other restrictions.
- d. Agency shall comply with the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) and Washington State RCW 43.185C.030. No Identified Information may be entered into HMIS for Clients in licensed domestic violence programs or for Clients fleeing domestic violence situations.
- e. To the extent that information entered by Agency into HMIS is or becomes subject to additional restrictions, Agency will immediately inform Commerce in writing of such restrictions.

### 3. Information Collection, Release and Sharing Consent:

- a. **Collection of Client Identified information:** An agency shall collect client identified information only when appropriate to the purposes for which the information is obtained or when required by law. An Agency must collect client information by lawful and fair means and, where appropriate, with the knowledge or consent of the individual.
- b. **Obtaining Client Consent:** In obtaining Client consent, each adult Client in the household must sign the *HMIS Client Release of Information* (or a Commerce-approved equivalent release document) to indicate consent to enter Client identified information into HMIS. If minors are present in the household, at least one adult in the household must consent minors by writing their names on the *HMIS Client Release of Information*. If any adult member of a household does not provide written consent, identifying information may not be entered into HMIS for *anyone* in the household. An unaccompanied youth may sign the consent form for themselves.
  - (iii) Do not enter personally indentifying information into HMIS for clients who are in licensed domestic violence agencies or currently fleeing or in danger from a domestic violence, dating violence, sexual assault or stalking situation.
  - (iv) Telephonic consent from the individual may temporarily substitute written consent provided that written consent is obtained at the first time the individual is physically present at Agency.
  - (v) A Client may withdraw or revoke consent for Client identified information collection by signing the *HMIS Revocation of Consent*. If a Client revokes their consent, Agency is responsible for immediately contacting Commerce and making appropriate data modifications in HMIS to ensure that Client's personal identified information will not be shared with other Partner Agencies or visible to the Agency staff within the system.
  - (vi) This information is being gathered for the collection and maintenance of a research database and data repository. The consent is in effect until the client revokes the consent in writing.
  - (vii) **No Conditioning of Services:** Agency will not condition any services upon or decline to provide any services to a Client based upon a Client's refusal to allow entry of identified information into HMIS.
  - (viii) **Re-release Prohibited:** Agency agrees not to release any Client identifying information received from HMIS to any other person or organization without written informed Client consent, or as required by law.
  - (ix) **Client Inspection/Correction:** Agency will allow a Client to inspect and obtain a copy of his/her own personal information except for information compiled in reasonable anticipation of, or for use in, a civil, criminal or administrative action

or proceeding. Agency will also allow a Client to correct information that is inaccurate. Corrections may be made by way of a new entry that is in addition to but is not a replacement for an older entry.

- c. **Security:** Agency will maintain security and confidentiality of HMIS information and is responsible for the actions of its users and for their training and supervision. Among the steps Agency will take to maintain security and confidentiality are:
  
- d. **Access:** Agency will permit access to HMIS or information obtained from it only to authorized Agency staff who need access to HMIS for legitimate business purposes (such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements). Agency will limit the access of such staff to only those records that are immediately relevant to their work assignments.
  
- e. **User Policy:** Prior to permitting any user to access HMIS, Agency will require the user to sign a ***User Policy, Responsibility Statement & Code of Ethics*** (“User Policy”), which is found on the Commerce web page ([www.commerce.wa.gov/hmiswa](http://www.commerce.wa.gov/hmiswa)) and is incorporated into this agreement and may be amended from time to time by Commerce. Agency will comply with, and enforce the User Policy and will inform Commerce immediately in writing of any breaches of the User Policy
  
- f. **Computers:** Security for data maintained in HMIS depends on a secure computing environment. Computer security is adapted from relevant provisions of the Department of Housing and Urban Development’s (HUD) “Homeless Management Information Systems (HMIS) Data and Technical Standards Notice” (Docket No. FR 4848-N-01; see <http://www.hud.gov/offices/cpd/homeless/hmis/standards/index.cfm>). Agencies are encouraged to directly consult that document for complete documentation of HUD’s standards relating to HMIS.

Agency agrees to allow access to HMIS only from computers which are:

- ✓ owned by Agency or approved by Agency for the purpose of accessing and working with HMIS.
- ✓ protected from viruses by commercially available virus protection software.
- ✓ protected with a software or hardware firewall.
- ✓ maintained to insure that the computer operating system running the computer used for the HMIS is kept up to date in terms of security and other operating system patches, updates, and fixes.

- ✓ accessed through web browsers with 128-bit encryption (e.g., Internet Explorer, version 6.0). Some browsers have the capacity to remember passwords, so that the user does not need to type in the password when returning to password-protected sites. This default shall **not** be used with respect to Commerce' HMIS; the end-user is expected to physically enter the password each time he or she logs on to the system.
  - ✓ staffed at all times when in public areas. When computers are not in use and staff is not present, steps should be taken to ensure that the computers and data are secure and not publicly accessible. These steps should minimally include: logging off the data entry system, physically locking the computer in a secure area, or shutting down the computer entirely.
- g. **Passwords:** Agency will permit access to HMIS only with use of a User ID and password, which the user may not share with others. Written information pertaining to user access (e.g. username and password) shall not be stored or displayed in any publicly accessible location.

Passwords shall be at least eight characters long and meet industry standard complexity requirements, including, but not limited to, the use of at least one of each of the following kinds of characters in the passwords: Upper and lower-case letters, and numbers and symbols. Passwords shall not be, or include, the username, or the HMIS name. In addition, passwords should not consist entirely of any word found in the common dictionary or any of the above spelled backwards. The use of default passwords on initial entry into the HMIS application is allowed so long as the .default password is changed on first use. Passwords and user names shall be consistent with guidelines issued from time to time by HUD and/or Commerce.

- h. **Training/Assistance:** Agency will permit access to HMIS only after the authorized user receives appropriate confidentiality training including that provided by Commerce. Agency will also conduct ongoing basic confidentiality training for all persons with access to HMIS and will train all persons who may receive information produced from HMIS on the confidentiality of such information. Agency will participate in such training as is provided from time to time by Commerce. Commerce will be reasonably available during Commerce defined weekday business hours for technical assistance (i.e. troubleshooting and report generation).
- i. **Records:** Agency and Commerce will maintain records of any disclosures of Client identifying information either of them makes of HMIS information for a period of **seven** years after such disclosure. On written request of a Client, Agency and Commerce will provide an accounting of all such disclosures within the prior **seven**-year period. Commerce will have access to an audit trail from HMIS so as to produce an accounting of disclosures made from one Agency to another by way of sharing of information from HMIS.

- j. **Retention of paper copies of personally identifying information:** Agencies must develop and adopt policies governing the retention of paper records containing personally identifying information derived from a Homeless Management Information system. The policy must define how long paper records are retained after they are no longer being actively utilized, and the process that will be used to destroy the records to prevent the release of personally identifying information. The policy must require the destruction of the paper records derived from an HMIS no longer than seven years after the last day the person was served by the organization.

#### 4. Information Entry Standards:

- a. Information entered into HMIS by Agency will be truthful, accurate and complete to the best of Agency's knowledge.
- b. Agency will *not* solicit from Clients or enter information about Clients into the HMIS database unless the information is required for a legitimate business purpose such as to provide services to the Client, to conduct evaluation or research, to administer the program, or to comply with regulatory requirements.
- c. Agency will only enter information into HMIS database with respect to individuals that it serves or intends to serve, including through referral.
- d. Agency will enter all data for a particular month into HMIS database by the 5<sup>th</sup> business day of the following month. Additionally, Agency will make every attempt enter all data for a particular week by the end of that week.
- e. Agency will not alter or over-write information entered by another Agency.

#### 5. Use of HMIS:

- (i) Agency will not access identifying information for any individual for whom services are neither sought nor provided by the Agency. Agency may access identifying information of the Clients it serves and may request via writing access to statistical, non-identifying information on both the Clients it serves and Clients served by other HMIS participating agencies.
- (ii) Agency may report non-identifying information to other entities for funding or planning purpose. Such non-identifying information shall not directly identify individual clients.
- (iii) Agency and Commerce will report only non-identifying information in response to requests for information from HMIS unless otherwise required by law.
- (iv) Agency will use HMIS database for legitimate business purposes only.
- (v) Agency will not use HMIS in violation of any federal or state law, including, but not limited to, copyright, trademark and trade secret laws, and laws prohibiting the transmission of material which is threatening, harassing, or obscene.



(vi) Agency will not use the HMIS database to defraud federal, state or local governments, individuals or entities, or conduct any illegal activity.

### 3. **Proprietary Rights of the HMIS:**

- (i) Agency shall not give or share assigned passwords and access codes for HMIS with any other agency, business, or individual. Users shall request their own login and password.
- (ii) Agency shall take due diligence not to cause in any manner, or way, corruption of the HMIS database, and Agency agrees to be responsible for any damage it may cause.
- (iii) **Limitation of Liability and Indemnification:** No party to this Agreement shall assume any additional liability of any kind due to its execution of this agreement of participation in the HMIS. It is the intent of the parties that each party shall remain liable, to the extent provided by law, regarding its own acts and omissions; but that no party shall assume additional liability on its own behalf or liability for the acts of any other person or entity except for the acts and omissions of their own employees, volunteers, agents or contractors through participation in HMIS. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement creates no rights in any third party.
- (iv) **Limitation of Liability.** Commerce shall not be held liable to any member Agency for any cessation, delay or interruption of services, nor for any malfunction of hardware, software or equipment.
- (v) **Disclaimer of Warranties.** Commerce makes no warranties, express or implied, including the warranties of merchantability and fitness for a particular purpose, to any Agency or any other person or entity as to the services of the HMIS to any other matter.

### **Additional Terms and Conditions:**

- (vi) Agency will abide by such guidelines as are promulgated by HUD and/or Commerce from time to time regarding administration of the HMIS.
- (vii) Agency and Commerce intend to abide by applicable law. Should any term of this agreement be inconsistent with applicable law, or should additional terms be required by applicable law, Agency and Commerce agree to modify the terms of this agreement so as to comply with applicable law.
- (viii) Neither Commerce nor Agency will transfer or assign any rights or obligations regarding HMIS without the written consent of either party.
- (ix) Agency agrees to indemnify and hold Commerce and its agents and staffs harmless from all claims, damages, costs, and expenses, including legal fees and disbursements paid or incurred, arising from any breach of this Agreement or any of Agency's obligations under this Agreement.

- (x) This Agreement will be in force until terminated by either party. Either party may terminate this agreement at will with 20 days written notice. Either party may terminate this agreement immediately upon a material breach of this Agreement by the other party, including but not limited to the breach of the Commerce Security Policy by Agency.
- (xi) If this Agreement is terminated, Agency will no longer have access to HMIS. Commerce and the remaining Partner Agencies will maintain their right to use all of the Client information previously entered by Agency except to the extent a restriction is imposed by Client or law.
- (xii) Copies of Agency data will be provided to the Agency upon written request of termination of this agreement. Data will be provided on CDs or media. Unless otherwise specified in writing, copies of data will be delivered other mutually agreed upon to Agency within fourteen (14) calendar days of receipt of written requests for data copies.