



U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing

Lakeland Housing Authority

# PHA Plans

Annual Plan for Fiscal Year 2019

**The Housing Authority of the City of Lakeland  
Request for Board Action**

**1. Describe Board Action Requested and why it is necessary:**

**Re: Resolution # (18-1457)**

The Board of Commissioners is requested to approve the above-referenced resolution in order to satisfy a United States Department of Housing and Urban Development regulation.

**2. Who is making request:**

A. Entity: LHA

B. Project: Approval of the LHA 2019 Agency Plan including but not limited to the Capital Funds Plans and Budgets, Administrative Plan for the Housing Choice Voucher, the ACOP for the Public Housing Program, Limited English Proficiency Plan (LEP/LAP), Analysis of Impediments, Family Self Sufficiency Plan, Flat Rents Schedule and signing the *PHA Certification of Compliance with the PHA Plans and Related Regulations*, forms 50075-HP (High Performance Agency) and 50077.

C. Originator: Carlos Pizarro

**3. Cost Estimate:**

Nominal cost of submittal to the Department of Housing and Urban Development

**Narrative:**

Annually, the Board of Commissioners of a Public Housing Agency is required to have its Chair (or other authorized official sign) the Department of Housing and Urban Development's *PHA Certification of Compliance with the PHA Plans (Agency Annual Plan, Capital Fund Plans and Budgets, Administrative Plan for the HCV Program, the ACOP for the Public Housing Program, Limited English Proficiency (LEP/LAP Plan), Analysis of Impediments, Family Self Sufficiency Plan, Flat Rents Schedule and Related Regulations*, forms 50075-HP and 50077, and have staff submit the form to the Department of Housing and Urban Development.

This resolution is to authorize the Chair of the Board of Commissioners of the Housing Authority of the City of Lakeland to sign forms 50075-HP and 50077 and to direct the Executive Director of the Housing Authority of the City of Lakeland to submit the signed form to the Department of Housing and Urban Development.

**Attachment:**

- *2019 Agency Plan, PHA Certification of Compliance with the PHA Plans (Agency Annual Plan, Capital Fund Plans and Budgets, Administrative Plan for the HCV Program, the ACOP for the Public Housing Program, Limited English Proficiency (LEP/LAP Plan), Analysis of Impediments, Family Self Sufficiency Plan, Flat Rents Schedule and Related Regulations, forms 50075-HP and 50077, etc.*

## ***2019 Agency Plan***

A PHA Plan is a comprehensive guide to public housing agency (PHA) policies, programs, operations, and strategies for meeting local housing needs and goals. There are two parts to the PHA Plan: The Annual Plan--which each PHA submits to the Department of Housing and Urban Development once a year based on the PHA fiscal year, which is submitted to the Department of Housing and Urban Development every year. It is through the Annual Plan that a PHA receives capital funding.

A PHA Plan also serves as the annual application for grants to support improvements to public housing buildings (Capital Fund Program) as well as safety in public housing.

Any local, regional, or State agency that receives funds to operate Federal public housing or Section 8 tenant-based assistance (vouchers) programs must submit a PHA Plan.

To ensure public participation in the process, LHA staff provided a copy of the plan to the LHA Board of Commissioners and the City Wide Resident Organization, which serves as the Resident Advisory Board of the Housing Authority of the City of Lakeland (RAB). Copies were also made available at various LHA sites as well as the City of Lakeland Community Redevelopment Agency.

LHA's senior staff scheduled a series of meetings with the RAB to involve the residents in the PHA Plan process.

One of the requirements of the Agency Plan is to schedule public meetings for community review and a *question and answer* period. The Public Forum and meetings for this year's Plan were held at the LHA Administration building.

The process to develop LHA's 2019 PHA plan spanned nearly three months and involved the collaboration of LHA staff, Public Housing residents, participants in the Housing Choice Voucher Program, stakeholders in the community, the City of Lakeland and, of course, LHA Board of Commissioners.

## RESOLUTION NO. 18-1457

### APPROVING THE 2019 AGENCY PLAN

**WHEREAS**, Public Housing Agencies are under the regulations set forth in Public and Indian Housing Notice 99-51 and 2001-26 requiring the submittal of Public Housing Agency Plans and related certifications; and

**WHEREAS**, the United States Department of Housing and Urban Development requires that all Public Housing Agencies submit the *PHA Certification of Compliance with the PHA Plans and Related Regulations*, form 50075-HP; and

**WHEREAS**, the Housing Authority of the City of Lakeland made modifications to its *Capital Funds Plan (s)*, *Administration Plan* and its *Admissions and Continued Occupancy Plan*, *Limited English Proficiency (LEP/LAP Plan)*, *Analysis of Impediments*, *Family Self Sufficiency Plan*, *Flat Rents Schedule* collectively referred to as the *Agency Plan*; and

**WHEREAS**, the Housing Authority of the City of Lakeland circulated the 2019 *Agency Plan* to its public housing residents, its Housing Choice Voucher participants, the Resident Advisory Board of the Housing Authority of the City of Lakeland, and other interested parties; and

**WHEREAS**, the Housing Authority of the City of Lakeland conducted public meetings to obtain the public's input and comments on its one-year 2019 Agency Plan;

**NOW THEREFORE**, be it resolved by the Board of Commissioners of the Housing Authority of the City of Lakeland that the Board Chairman is authorized to sign the *PHA Certification of Compliance with the PHA Plans and Related Regulations*, forms 50075-HP and 50077 (attached hereto), which the Executive Director will afterwards submit to the Department of Housing and Urban Development.

### CERTIFICATE OF COMPLIANCE

This is to certify that the Board of Commissioners of the Housing Authority of the City of Lakeland has approved and adopted the Resolution No.18-1457, dated September 17, 2018.

Attested by:

\_\_\_\_\_  
**Benjamin Stevenson, Secretary**

\_\_\_\_\_  
**Michael Pimentel, Chairman**



**U.S. Department of Housing and Urban**  
 OFFICE OF PUBLIC AND INDIAN HOUSING  
 REAL ESTATE ASSESSMENT CENTER

**Public Housing Assessment System (PHAS) Score Report for Interim Rule**

Report Date: 08/17/2018

PHA Code:	FL011
PHA Name:	HOUSING AUTHORITY OF THE CITY OF LAKELAND
Fiscal Year End:	12/31/2017

PHAS Indicators	Score	Maximum Score
Physical	30	40
Financial	25	25
Management	25	25
Capital Fund	10	10
Late Penalty Points	0	
<b>PHAS Total Score</b>	<b>90</b>	<b>100</b>
<b>Designation Status:</b>	<b>High Performer</b>	

Published 08/17/2018

Initial published 08/17/2018

Financial Score Details	Score	Maximum Score
Unaudited/Single Audit		
1. FASS Score before deductions	25.00	25
2. Audit Penalties	0.00	
Total Financial Score Unrounded (FASS Score - Audit Penalties)	25.00	25

Capital Fund Score Details	Score	Maximum Score
Timeliness of Fund Obligation:		
1. Timeliness of Fund Obligation %	90.00	
2. Timeliness of Fund Obligation Points	5	5
Occupancy Rate:		
3. Occupancy Rate %	99.68	
4. Occupancy Rate Points	5	5
Total Capital Fund Score (Fund Obligation + Occupancy Rate):	10	10

Notes:

1. The scores in this Report are the official PHAS scores of record for your PHA. PHAS scores in other systems are not to be relied upon and are not being used by the Department.
2. Due to rounding, the sum of the PHAS indicator scores may not equal the overall PHAS score.
3. "0" FASS Score indicates a late presumptive failure. See 902.60 and 902.92 of the Interim PHAS rule.
4. "0" Total Capital Fund Score is due to score of "0" for Timeliness of Fund Obligation. See the Capital Fund
5. PHAS Interim Rule website - <http://www.hud.gov/offices/reac/products/prodphasintrule.cfm>

<b>Streamlined Annual PHA Plan</b> <i>(High Performer PHAs)</i>	U.S. Department of Housing and Urban Development Office of Public and Indian Housing	OMB No. 2577-0226 Expires: 02/29/2016
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**Purpose.** The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families

**Applicability.** Form HUD-50075-HP is to be completed annually by **High Performing PHAs**. PHAs that meet the definition of a Standard PHA, Troubled PHA, HCV-Only PHA, Small PHA, or Qualified PHA do not need to submit this form.

**Definitions.**

- (1) **High-Performer PHA** – A PHA that owns or manages more than 550 combined public housing units and housing choice vouchers, and was designated as a high performer on both of the most recent Public Housing Assessment System (PHAS) and Section Eight Management Assessment Program (SEMAP) assessments.
- (2) **Small PHA** - A PHA that is not designated as PHAS or SEMAP troubled, or at risk of being designated as troubled, and that owns or manages less than 250 public housing units and any number of vouchers where the total combined units exceeds 550.
- (3) **Housing Choice Voucher (HCV) Only PHA** - A PHA that administers more than 550 HCVs, was not designated as troubled in its most recent SEMAP assessment, and does not own or manage public housing.
- (4) **Standard PHA** - A PHA that owns or manages 250 or more public housing units and any number of vouchers where the total combined units exceeds 550, and that was designated as a standard performer in the most recent PHAS or SEMAP assessments.
- (5) **Troubled PHA** - A PHA that achieves an overall PHAS or SEMAP score of less than 60 percent.
- (6) **Qualified PHA** - A PHA with 550 or fewer public housing dwelling units and/or housing choice vouchers combined, and is not PHAS or SEMAP troubled.

A.	PHA Information.																										
A.1	<p> <b>PHA Name:</b> <u>The Housing Authority of the City of Lakeland</u> <b>PHA Code:</b> <u>FL011</u>  <b>PHA Type:</b> <input type="checkbox"/> Small <input checked="" type="checkbox"/> High Performer  <b>PHA Plan for Fiscal Year Beginning:</b> (MM/YYYY): January 1, 2019  <b>PHA Inventory</b> (Based on Annual Contributions Contract (ACC) units at time of FY beginning, above)  <b>Number of Public Housing (PH) Units</b> <u>339</u> <b>Number of Housing Choice Vouchers (HCVs)</b> <u>1485</u>  <b>Total Combined</b> <u>1824</u>  <b>PHA Plan Submission Type:</b> <input checked="" type="checkbox"/> Annual Submission <input type="checkbox"/> Revised Annual Submission         </p> <p> <b>Availability of Information.</b> In addition to the items listed in this form, PHAs must have the elements listed below readily available to the public. A PHA must identify the specific location(s) where the proposed PHA Plan, PHA Plan Elements, and all information relevant to the public hearing and proposed PHA Plan are available for inspection by the public. Additionally, the PHA must provide information on how the public may reasonably obtain additional information of the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. At a minimum, PHAs must post PHA Plans, including updates, at each Asset Management Project (AMP) and main office or central office of the PHA. PHAs are strongly encouraged to post complete PHA Plans on their official website. PHAs are also encouraged to provide each resident council a copy of their PHA Plans.         </p> <p> <input type="checkbox"/> <b>PHA Consortia:</b> (Check box if submitting a Joint PHA Plan and complete table below)         </p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th rowspan="2" style="width: 25%;">Participating PHAs</th> <th rowspan="2" style="width: 10%;">PHA Code</th> <th rowspan="2" style="width: 25%;">Program(s) in the Consortia</th> <th rowspan="2" style="width: 20%;">Program(s) not in the Consortia</th> <th colspan="2" style="width: 20%;">No. of Units in Each Program</th> </tr> <tr> <th style="width: 10%;">PH</th> <th style="width: 10%;">HCV</th> </tr> </thead> <tbody> <tr> <td>Lead PHA:</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Participating PHAs	PHA Code	Program(s) in the Consortia	Program(s) not in the Consortia	No. of Units in Each Program		PH	HCV	Lead PHA:																	
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Lead PHA:																											

**B. Annual Plan Elements**

**B.1 Revision of PHA Plan Elements.**

(a) Have the following PHA Plan elements been revised by the PHA since its last **Annual PHA Plan** submission?

Y N

- Statement of Housing Needs and Strategy for Addressing Housing Needs.
- De-concentration and Other Policies that Govern Eligibility, Selection, and Admissions.
- Financial Resources.
- Rent Determination.
- Homeownership Programs.
- Safety and Crime Prevention.
- Pet Policy.
- Substantial Deviation.
- Significant Amendment/Modification (AFFN)

(b) The PHA must submit its De-Concentration Policy for Field Office Review. N/A

(c) If the PHA answered yes for any element, describe the revisions for each element below:

1. Elements removed and/or modified and/or added

**ACOP - PH**

- a) Changes that were made were in **Chapter 3-I. B**
- b) Added: Any person(s) reporting custody of any minor child/children must provide legal documentation of legal guardianship.
- c) Changes that were removed in **Chapter 4-III.B Local Preference [24 CFR960.206]**
- d) Removal of the relocated at the request if the Lakeland Housing Authority 50 points
- e) Person residing in government acquired property within the Lakeland Housing Jurisdiction 35 points
- f) VAWA Policy, Flat Rent Policy, Gay and Lesbian Right Policy---no changes needed
- g) One Strike has been removed from policy
- h) A Veteran's preference of 50 points will be added

**ADMIN PLAN – HCV**

Provision	Mandatory or Discretionary	Explanation	Included in the Adm
Working Family Preference 50 point and adding the <b>Veteran's preference of 50 points</b>	Both	The working preference is a discretionary to the PHA but is regulated. Under the regulation the PHA is unable to base this preference based on the amount of earned income. The PHA had previously established a minimum of 30 hours, and this policy has now been removed to be in compliance with regulations. <b>Veteran's preference will be added effective 01/01/2019, DD214 or a VA Card is required in order to claim this preference.</b>	Yes
Public Housing Resident affected by Relocation Preference	Both	These families are protected under the Relocation Act and are not subject to the waiting list, therefore the preference has been removed.	No
Verification of Social Security Numbers	Mandatory	This provision modifies the regulation as it applies to program <i>applicants</i> (as differentiated from program <i>participants</i> ).	Yes
Definition of extremely low-income families	Mandatory	These regulations have been revised to reflect the new statutory definition of an extremely low-income (ELI) family.	Yes
Exclusion of Mandatory education fees from income	Mandatory	This provision amends the definition of "income" to exclude from calculations of individual income any financial assistance received for mandatory fees and charges (in addition to tuition).	Yes
Streamlined annual reexamination for fixed sources of income	Discretionary	This provision offers LHA the discretion to streamline income determination for any family member with a fixed source of income.	Yes
Earned Income Disregard	Mandatory	The new regulatory provisions limit to 24 straight months the time period during which a family member is eligible to receive the benefit of the earned income disregard (EID), which streamline the administration of the EID by eliminating the requirement for PHAs to track family member changes in employment over a 4-year period.	Yes



Family declaration of assets under \$5000	Discretionary	Under this provision, LHA must obtain third-party verification of all family assets upon admitting a family to the HCV or public housing program and then again at least every 3 years thereafter.	Yes	
Utility Reimbursement	Discretionary	This provision permits PHAs to make utility reimbursement payments quarterly, rather than monthly, if the total quarterly reimbursement payment due to a family is equal to or less than \$45 per quarter. The LHA currently does not have the software that can monitor this, therefore we have opted out of this discretionary waiver for now.	No	
Biennial inspections and the use of alternative inspection methods	Discretionary	This provision offers LHAs the discretion to conduct unit inspections biennially rather than annually, for both the HCV and PBV programs.	Yes	
Exception payment standards for providing reasonable accommodation	Discretionary	This provision authorizes a PHA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if requested as a reasonable accommodation by a family that includes a person with a disability.	Yes	
Family income and composition: regular and interim examinations	Discretionary	This provision eliminates the requirement that a voucher agency conduct a reexamination of income whenever a new family member is added. The provision does <i>not</i> eliminate the requirement to verify other aspects of program eligibility (e.g., SSNs, criminal history, etc.), nor does it eliminate the requirement to perform annual reexaminations of family income (for example, if that happens to be the point at which a new family member is added); it simply eliminates the requirement to perform an interim reexamination of income whenever a new family member is added.	No	
Utility payments schedules	Mandatory	This provision requires PHAs to use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under the PHA subsidy standards.	Yes	
VAWA final rule-December 2015	Mandatory	The rule includes information on notification, emergency transfers, certification of abuse and material to protect against adverse treatment related to criminal screening policies. Importantly, the rule expands the scope of VAWA beyond Section 8 and public housing programs.	Yes	

2. Financial Resources: This section lists the financial resources that are anticipated to be available to the PHA for the support of Federal public housing and tenant-based Section 8 assistance programs administered by the PHA during the Plan year. Revision: Updated table of financial sources and uses below.

<b>Financial Resources: Planned Sources and uses</b>		
<b>Sources</b>	<b>Planned \$</b>	<b>Planned Uses</b>
<b>1. Federal Grants (FY2018 grants)</b>	Draft numbers (Not Final)	
a) Public Housing Operating Fund	\$962,239	PH Development/ Modernization/ Job Readiness
b) Public Housing Capital Fund	\$3,144,033	Modernization and Development
c) Annual Contributions for Section 8 Tenant-Based Assistance	\$8,549,639	Voucher, VASH, M5, TP, etc....
d) Resident Opportunity and Self-Sufficiency Grants		
<b>Other Federal Grants (list below)</b>		
Low Income Housing Tax Credits (SAIL)	\$5,298,200	Redevelopment of PH
<b>2. Prior Year Federal Grants (unobligated funds only) (list below)</b>		

<b>CFP 2019 (Estimated)</b>	<b>\$924,096</b>	<b>Modernization and PH Development</b>
<b>CFP 2018</b>	\$924,096	Modernization and PH Development
<b>CFP 2017</b>	\$608,069	Modernization and PH Development
<b>CFP 2016</b>	\$551,967	Modernization and PH Development
CFP 2015	\$533,187	Modernization
CFP 2014	\$281,129	Modernization
CFP 2013	\$277,386	Modernization
CFP 2012	\$70,661	Modernization
URP/HOPE VI	\$1,934,034	Modernization/ PH Development
DOL Youth Build	\$390,154.33	Youth Build Program
FSS Grant (Sec.8 HCV and Public Housing combined)	\$105,738	Resident Services
ROSS Grant (Service Coordinator)	\$219,185	Resident Services
<b>3. Public Housing Dwelling Rental Income</b>	\$282,000	PH
<b>4. Other income (list below)</b>		
Investment Income	\$1,300,000 Unaudited	PH
Entrepreneurial Activities	\$0.00	PH & Section 8
<b>Total resources</b>	\$26,136,628	

**B.2 New Activities.**

(a) Does the PHA intend to undertake any new activities related to the following in the PHA's current Fiscal Year?

Y N

Hope VI or Choice Neighborhoods.

Mixed Finance Modernization or Development.

Demolition and/or Disposition.

Conversion of Public Housing to Tenant Based Assistance.

Conversion of Public Housing to Project-Based Assistance under RAD.

Project Based Vouchers.

Units with Approved Vacancies for Modernization.

Other Capital Grant Programs (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).

(b) If any of these activities are planned for the current Fiscal Year, describe the activities. For new demolition activities, describe any public housing development or portion thereof, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act under the separate demolition/disposition approval process. If using Project-Based Vouchers (PBVs), provide the projected number of project based units and general locations, and describe how project basing would be consistent with the PHA Plan.

**Section B.2 - HUD-50075: New Activities**

LHA goal is to transform its entire public housing portfolio into mixed-income communities over the next 2 to 40 years, in an effort to reposition the agencies' public housing assets into better performing developments that are competitive in the marketplace as well as improve their physical and social conditions.

For over twenty years LHA's Development Department has been responsible for creating economic development opportunities in the City of Lakeland as well as redeveloping challenged neighborhoods that have not been invested in and neglected for some time. LHA and/or its subsidiary entity(s) plans to either partner with other developers or self-develop its properties using HUD's mixed- finance approach.

LHA envisions a range of options that will be employed to achieve its goal to transform its portfolio which may include but not be limited to: modernization of existing public housing units; demolition of selected units and construction of new units; introduction of market rate and for-sale

units; acquisition and development of new units in, around and outside of LHA properties; and wholesale redevelopment of its public housing communities.

LHA was granted Low Income Housing Tax Credits to develop a 100-unit's community (Phase 1) in 2016; this community will replace approximately 25 units of existing Public Housing units located within the West Lake Apartments community (AMP-1). Additionally, LHA applied and was granted additional Low-Income Housing Tax Credits (LIHTC) for Phase 2 to develop 132 units, in order to develop Phase 2, 64 existing units will be disposed and demolished. The Agency is planning to apply for more LIHTC for Phase 3 to replace the remaining units located within the West Lake Apartments community. More specifically LHA plans to submit applications for the next rounds of the Florida Housing Finance Corporation LIHTC application season, for our Public Housing Developments in the coming year(s).

In an effort to expedite the closure of its 10 plus year old HOPE VI Grant, LHA requested HUD to amend the Revitalization Plan and associated budget revisions as required. LHA is working with its on-call architectural and engineering firms on the following options for closeout of the grant:

- **Micro-Cottages:** The authority has developed 48 affordable housing units and a community building with a combination of RHF funds from FY 2009 – 2014 and/or HOPE VI funds.
- **Cecil Gober Modernization:** This community consists of 37 near elderly/senior units. The GPNA that was performed for the site supports modernization of the site. As part of the modernization, LHA is seeking to correct deficiencies outlined by the GPNA as well as reconfigure the units so the seniors living within the community can age in place. The agency is fixing the irrigation system.
- **Renaissance Tenth Street Lot:** LHA sold and disposed of the 4.33-acres of land at the intersection of N. Florida Avenue and W. Tenth Street to a third-party developer. The sales proceeds will be used to develop, acquire, and/or modernize affordable housing units at properties owned and/or controlled by LHA or its affiliates.
- **West Lake Apartments (Second and Third Phase):** LHA will be submitting a mixed-finance application/proposal to HUD and will pursue the construction of new Public Housing/Mixed Financed units using Low Income Housing Tax Credits and Public Housing funds earmarked for the development of Affordable Housing. First Phase is under construction.

Any balance of remaining Second Increment RHF funds received to date, along with future RHF grant funding, will be accumulated and used for the potential redevelopment of LHA's other public housing communities and/or for other projects under the mixed- finance development approach. Additional acquisitions of vacant land or other existing rental properties, adjacent to current public housing sites may also be initiated, subject to submission and approval by HUD of the appropriate development proposals.

Other mixed-finance transactions (via acquisition or new construction or both) may be proposed later in the Plan commensurate with the LHA Strategic Plan. Financing may include use of regular Capital Funds and/or HUD's Capital Fund Financing Program (CFFP). CFFP/RAD involves borrowing against future flow of annual Capital Funds.

LHA plans to pursue public housing development activities and will utilize its Development Department and/or other subsidiary entities for development, financing, and the formation of a variety of ownership structures as well as utilize its management entity for the operation of public and non-public housing programs.

The Authority intends to use Capital Funds and other public and private funds to redevelop existing family and elderly developments. LHA will either self-develop or partner with a master developer for Westlake Apartments or other (s) site (s) and conduct a community engagement process to arrive at a master plan for redevelopment.

LHA will also start self-developing and operating affordable housing. Some of the proposed self –developing project will either be located on the 10.56-acre site located on W. 10th Street or at the 17.06-acre site at Hunter field PUD (Arbor Manor) or at the John Wright Homes or Washington Ridge vacant lots. LHA also intends to use Capital Funds and other funds to acquire and redevelop properties in and around its public housing communities.

#### **Demolition and/or Disposition**

This section describes whether HUD-approved applications by LHA to demolish or dispose (sell) public housing projects owned by LHA and subject to Annual Contributions Contracts (ACCs), or pending applications for demolition or disposition, have changed during the current plan year.

In such cases, LHA would be required to describe the housing and the number of affected units for which it will apply or has pending for demolition or disposition; and provide a projected timetable for the demolition or disposition. Information on planned and pending demolition and/or disposition efforts is provided in the following tables.

LHA has been working with residents and the City of Lakeland to define a strategy for the Cecil Gober rehabilitation project, the West Lake Apartments disposition and the Section 32 Public Housing Homeownership program. The Section 32 disposition plan for the 12 houses at Hampton Hills was approved by the Special Application Center in November 2013. The implementing agreement was executed in March 2014. LHA will amend the agreement as needed to implement the strategy. Individual houses within the Hampton Hills community may be sold to qualified residents, retained as public housing or sold to third parties in accordance with the strategy and HUD regulations.

LHA will include the vacant lots in this process as well. Specifically, LHA plans to submit a disposition application for the 17.3-acre tract within the Hunter field Planned Unit Development and the land located on the 10.56-acre site on W. 10th Street and the John Wright Homes or Washington Ridge vacant lots. The sales proceeds from both properties will be used to develop, acquire, or modernize affordable housing units at other properties owned and/or controlled by LHA or its affiliates.

Table #1 Demolition/Disposition/Modernization Activity Description

1a. Development name: Hampton Hills Houses

1b. Development (project) number: FL01100004

2. Activity type: Demolition  
Disposition X  
3. Application status (select one)  
Approved X  
Submitted, pending approval  
Planned application  
4. Date application approved, submitted, or planned for submission: 11/14/2014  
5. Number of units affected: 12 (Sold 5)  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity: 48 months  
a. Actual or projected start date of activity: 7/1/2012 b. Projected end date of activity: 12/31/2020  
Note\*: Section 32 Approved Disposition

Table #2 Demolition/Disposition/Modernization Activity Description

1a. Development name: West Lake Apartments (Phase 1 under construction) (Phase 2 Demo-Dispo Application Submitted)(Phase 3 is in process)  
1b. Development (project) number: FL01100001  
2. Activity type: Demolition  
Disposition: X  
3. Application status (select one) Approved  
Submitted, (**pending approval for Phase 2 and 3**)  
Planned application X  
4. Date application **approved, submitted, or planned for submission: Phase one- 4/2017 and Phase two- 04/2018 (Phase 3 2019)**  
5. Number of units affected: 120  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 1/01/2011  
b. Projected end date of activity: 12/31/2022  
Note\*: SAIL LIHTC Approved Phase 1 and 2

Table #3 Modernization Activity Description

1a. Development name: Cecil Gober Villas  
1b. Development (project) number: FL01100001  
2. Activity type: Demolition Disposition Modernization: X  
3. Application status (select one) Approved  
Submitted, pending approval  
Planned application: X  
4. Date application approved, submitted, or planned for submission: 12/1/2015  
5. Number of units affected: 37  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 12/01/2015  
b. Projected end date of activity: 12/31/2019  
Note\*: Capital Funds will be used

Table #4 Demolition/Disposition/Modernization Activity Description

1a. Development name: Arbor Manor (Hunter field PUD)  
1b. Development (project) number: FL01100001  
2. Activity type: Demolition  
Disposition: X  
3. Application status (select one) Approved Submitted, pending approval: X Planned application  
4. Date application approved, submitted, or **planned for submission: 2019**  
5. Number of units affected: 0  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 2019  
b. Projected end date of activity: 12/31/2021  
Note\*: N/A

Table #5 Demolition/Disposition/Modernization Activity Description

1a. Development name: 10th Street in front of Colton Meadow Apartments, Lakeland, Polk County, Florida  
1b. Development (project) number: FL01100001  
2. Activity type: Demolition-Disposition: X  
3. Application status (select one) Approved  
Submitted, pending approval  
Planned application: X  
4. Date application approved, submitted, or **planned for submission: 2019**

5. Number of units affected: 0  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 2019  
b. Projected end date of activity: 12/31/2020  
Note\*: sold

Table #6 Demolition/Disposition/Modernization Activity Description

1a. Development name: 15 Vacant Parcels at Washington Park, FL29P011003, HOPE VI Site  
1b. Development (project) number: FL01100003  
2. Activity type: Demolition  
Disposition: X  
3. Application status (select one) Approved  
Submitted, pending approval: X Planned application:  
4. Date application approved, submitted, or planned for submission: 11/12/2014  
5. Number of units affected: 0  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 2020  
b. Projected end date of activity: 12/31/2021  
Note\*: Funding pending

Table #7 Demolition/Disposition/Modernization Activity Description

1a. Development name: Vacant Parcels at John Wright Homes  
1b. Development (project) number: FL01100001  
2. Activity type: Demolition - Disposition: X  
3. Application status (select one) Approved  
Submitted, pending approval: **X Planned application:**  
4. Date application approved, submitted, or planned for submission: 2019  
5. Number of units affected: 0  
6. Coverage of action (select one)  
Part of the development  
Total development: X  
7. Timeline for activity:  
a. Actual or projected start date of activity: 2020  
b. Projected end date of activity: 12/31/2021  
Note\*: Funding pending

**Project-Based Vouchers**

This section describes the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan.

When funding becomes available, the Authority plans to use some of its vouchers under the Project Based Vouchers (PBV) option, as described at 24 CFR Part 983. This may be done in one of two ways.

First, LHA may issue a Request for Proposals from owners wishing to participate in the program. The criteria and procedures for such selections will be described in the RFP and in the LHA's Section 8 Administrative Plan.

Second, LHA may make non-competitive selections of owners whose projects included a competitive selection of proposals, such as housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program.

The Authority may also submit a proposal under a RFP for units in its public housing portfolio or a property it may acquire under its —redevelopment authority for this purpose. The use of PBV is consistent with the overall PHA Plan which is encouraging the development of affordable mixed-use, mixed-income housing particularly in consort with broader neighborhood revitalization efforts such as the Westlake project.

LHA's PBV criteria and procedures will propose the use of these resources in ways that facilitate achievement of its overall housing goals in general and the mobilization of potential relocation resources, to address the housing needs of LHA families at developments slated to be redeveloped, including, but not limited to, the Cecil Gober Villas, Dakota Park (Carrington Place) and Westlake Apartments projects and/or other similar situations.

Under the HUD Asset Management Model, some of LHA's developments are not financially sustainable because insufficient Annual Contract Contribution (ACC) subsidy is received from HUD to support their operations. LHA is currently evaluating options for restructuring the properties; possibly seeking to convert these properties to Project- based Section 8 communities. Furthermore, LHA is considering under the

LHA may project-base units within the Carrington Place Development project.

LHA plans to utilize project-based vouchers for up to 80 units within the final phase of the West Lake Apartments Low Income Housing Tax Credit project which will begin construction by the end of 2017 and be ready for occupancy in 2018.

**B.3**

**Progress Report.**

Provide a description of the PHA's progress in meeting its Mission and Goals described in the PHA 5-Year Plan.

The Housing Authority of the City of Lakeland is meeting its Mission to provide quality, affordable housing and self-sufficiency opportunities in an effective and professional manner by passing every HUD REAC inspection and staying in compliance with HUD, State and Local rules and regulations. Additionally, we are actively working on meeting our goals as follow:

Goal #1: Increase the number of affordable housing units by at least 30%. We were awarded LIHTC to begin demolition of 25 Public Housing units and start construction of 100 Senior units. Additionally, the Williamstown Community (48 Public Housing units will be added) was approved and it is under construction.

Goal #2: Maintain the high performing status in Public Housing and Section 8. We were designated a High Performer Agency for Public Housing and Section on the most recent evaluation.

Maintain a public housing vacancy rate of 2% or less. LHA has been able to maintain the vacancy at or below 2%. Maintain an average work order response time of less than three days. Collect at least 97% of the rent and other charges excluding fraud recovery and major tenant abuse due to LHA. Reduce utility usage (including water) by 25% by December 31, 2019.

Maintain a Section 8 lease-up rate of at least 98% while not exceeding HUD limitations. Continue and improve task tracking / management by objectives. Enhance internal operations to reduce costs, improve efficiencies, and become even more effective and professional.

Goal #3: Maintain and improve our public image through enhanced communication, coordination, and accountability with outside entities, among the staff and with residents.

Goal #4: Be the premier innovative and effective affordable housing provider in Florida.

Develop and build 48 Near Elderly (Over 55) Public Housing Units in the Williamstown 3 acres vacant lot using the HOPE VI grant, which allowed LHA to close out the HOPE VI grant by December 30, 2018. Apply for additional housing choice vouchers as they become available.

Seek out new funding opportunities as they become available including but not limited to LIHTC. Develop and build new communities in all LHA owned land or parcels and re-develop the West Lake Apartments community, John Wright Homes, Carrington Place and Renaissance at Washington Ridge.

Assist at least 7 families into homeownership through the Public Housing Homeownership Program, the HOPE VI Program, or other programs by December 31, 2018.

Incorporate non-traditional entrepreneurial methods and practices that positively impact affordable housing in LHA's jurisdiction. Incorporate financially feasible Green and Sustainability Best Practices in all future developments. Obtain at least \$100 million in grants and/or leveraging from all sources by December 31, 2019.

Goal #5: Increase and encourage the self-sufficiency efforts of all residents. (On-going)

Increase the usage of LHA educational and computer literacy programs by 25% by December 31, 2019.

Substantially increase the number of LHA seniors and people with disabilities using LHA sponsored programs by December 31, 2019.

Goal #6: Maintain a high level of employee relations and morale. (On-going)

Enhance lines of communications through staff meetings and other necessary internal communications to provide updates and progress reports about agency activities.

Continue to reward performance through the timely implementation of a performance management system.

Encourage and support staff partaking in training and continuing education opportunities to the greatest degree possible within funding constraints.

Conduct an annual employee satisfaction survey.

<b>B.4.</b>	<p><b>Most Recent Fiscal Year Audit.</b></p> <p>(a) Were there any findings in the most recent FY Audit?</p> <p>Y N  <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>(b) If yes, please describe: No findings, however, there was a qualified opinion related to an inter-fund transaction from years past.</p>
<b>Other Document and/or Certification Requirements.</b>	
<b>C.1</b>	<p><b>Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan</b></p> <p>See attached: <a href="#">Form 50077-ST-HCV-HP</a>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<b>C.2</b>	<p><b>Civil Rights Certification.</b></p> <p>See attached: <a href="#">Form 50077-ST-HCV-HP</a>, <i>Certification of Compliance with PHA Plans and Related Regulations</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<b>C.3</b>	<p><b>Resident Advisory Board (RAB) Comments.</b></p> <p>(a) Did the RAB(s) provide comments to the PHA Plan?</p> <p>Y N  <input type="checkbox"/> <input checked="" type="checkbox"/></p> <p>If yes, comments must be submitted by the PHA as an attachment to the PHA Plan. PHAs must also include a narrative describing their analysis of the RAB recommendations and the decisions made on these recommendations.</p>
<b>C.4</b>	<p><b>Certification by State or Local Officials.</b></p> <p>See attached: <a href="#">Form HUD 50077-SL</a>, <i>Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan</i>, must be submitted by the PHA as an electronic attachment to the PHA Plan.</p>
<b>D</b>	<p><b>Statement of Capital Improvements.</b> Required in all years for all PHAs completing this form that administer public housing and receive funding from the Capital Fund Program (CFP).</p>
<b>D.1</b>	<p><b>Capital Improvements.</b> Include a reference here to the most recent HUD-approved 5-Year Action Plan (HUD-50075.2) and the date that it was approved by HUD.</p> <p><b>On behalf of the Housing Authority of the City of Lakeland, Florida (LHA), I hereby certify that our 5-Year CFP Plan was last approved on January 2018. LHA has four (5) active CFP grants. The grants are CFP 2014, CFP 2015, CFP 2016, CFP 2017 and CFP 2018. LHA also has four (5) CFP grants that are fully expended but still showing within eLOCCS until the grants are officially closed out. CFP grants awaiting closeout are CFP 2010 – 2013.</b></p>

**Instructions for Preparation of Form HUD-50075-HP  
Annual Plan for High Performing PHAs**

**A. PHA Information.** All PHAs must complete this section.

**A.1** Include the full **PHA Name, PHA Code, PHA Type, PHA Fiscal Year Beginning (MM/YYYY), PHA Inventory, Number of Public Housing Units and or Housing Choice Vouchers (HCVs), PHA Plan Submission Type,** and the **Availability of Information,** specific location(s) of all information relevant to the public hearing and proposed PHA Plan. ([24 CFR §903.23\(4\)\(e\)](#))

**PHA Consortia:** Check box if submitting a Joint PHA Plan and complete the table. ([24 CFR §943.128\(a\)](#))

**B. Annual Plan.**

**B.1 Revision of PHA Plan Elements.** PHAs must:

Identify specifically which plan elements listed below that have been revised by the PHA. To specify which elements have been revised, mark the “yes” box. If an element has not been revised, mark “no.”

**Statement of Housing Needs and Strategy for Addressing Housing Needs.** Provide a statement addressing the housing needs of low-income, very low-income and extremely low-income families and a brief description of the PHA’s strategy for addressing the housing needs of families who reside in the jurisdiction served by the PHA. The statement must identify the housing needs of (i) families with incomes below 30 percent of area median income (extremely low-income), (ii) elderly families and families with disabilities, and (iii) households of various races and ethnic groups residing in the jurisdiction or on the waiting list based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data. The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units, and location. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA’s public housing and Section 8 tenant-based assistance waiting lists. ([24 CFR §903.7\(a\)\(1\)](#)) and 24 CFR §903.12(b). Provide a description of the PHA’s strategy for addressing the housing needs of families in the jurisdiction and on the waiting list in the upcoming year. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent it pertains to the housing needs of families that are on the PHA’s public housing and Section 8 tenant-based assistance waiting lists. ([24 CFR §903.7\(a\)\(2\)\(ii\)](#)) and 24 CFR §903.12(b).

**Deconcentration and Other Policies that Govern Eligibility, Selection and Admissions.** Describe the PHA’s admissions policy for deconcentration of poverty and income mixing of lower-income families in public housing. The Deconcentration Policy must describe the PHA’s policy for bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The deconcentration requirements apply to general occupancy and family public housing developments. Refer to 24 CFR §903.2(b)(2) for developments not subject to deconcentration of poverty and income mixing requirements. ([24 CFR §903.7\(b\)](#)) Describe the PHA’s procedures for maintaining waiting lists for admission to public housing and address any site-based waiting lists. ([24 CFR §903.7\(b\)](#)) A statement of the PHA’s policies that govern resident or tenant eligibility, selection and admission including admission preferences for both public housing and HCV. ([24 CFR §903.7\(b\)](#)) Describe the unit assignment policies for public housing. ([24 CFR §903.7\(b\)](#))

**Financial Resources.** A statement of financial resources, including a listing by general categories, of the PHA’s anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned use for the resources. ([24 CFR §903.7\(c\)](#))

**Rent Determination.** A statement of the policies of the PHA governing rents charged for public housing and HCV dwelling units, including applicable public housing flat rents, minimum rents, voucher family rent contributions, and payment standard policies. ([24 CFR §903.7\(d\)](#))

**Homeownership Programs.** A description of any homeownership programs (including project number and unit count) administered by the agency or for which the PHA has applied or will apply for approval. For years in which the PHA’s 5-Year PHA Plan is also due, this information must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act. ([24 CFR §903.7\(k\)](#)) and 24 CFR §903.12(b).

**Safety and Crime Prevention (VAWA).** A description of: **1)** Any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking; **2)** Any activities, services, or programs provided or offered by a PHA that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and **3)** Any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families. ([24 CFR §903.7\(m\)\(5\)](#))

**Pet Policy.** Describe the PHA’s policies and requirements pertaining to the ownership of pets in public housing. ([24 CFR §903.7\(n\)](#))

**Substantial Deviation.** PHA must provide its criteria for determining a “substantial deviation” to its 5-Year Plan. ([24 CFR §903.7\(r\)\(2\)\(i\)](#))

**Significant Amendment/Modification.** PHA must provide its criteria for determining a “Significant Amendment or Modification” to its 5-Year and Annual Plan. Should the PHA fail to define ‘significant amendment/modification’, HUD will consider the following to be ‘significant amendments or modifications’: a) changes to rent or admissions policies or organization of the waiting list; b) additions of non-emergency public housing CFP work items (items not included in the current CFP Annual Statement or CFP 5-Year Action Plan); or c) any change with regard to demolition or disposition, designation, homeownership programs or conversion activities. See guidance on HUD’s website at: [Notice PIH 1999-51](#). ([24 CFR §903.7\(r\)\(2\)\(ii\)](#))

If any boxes are marked “yes”, describe the revision(s) to those element(s) in the space provided.

PHAs must submit a Deconcentration Policy for Field Office review. For additional guidance on what a PHA must do to deconcentrate poverty in its development and comply with fair housing requirements, see [24 CFR 903.2](#). ([24 CFR §903.23\(b\)](#))

**B.2 New Activities.** If the PHA intends to undertake any new activities related to these elements or discretionary policies in the current Fiscal Year, mark “yes” for those elements, and describe the activities to be undertaken in the space provided. If the PHA does not plan to undertake these activities, mark “no.”



**Hope VI.** 1) A description of any housing (including project name, number (if known) and unit count) for which the PHA will apply for HOPE VI; and 2) A timetable for the submission of applications or proposals. The application and approval process for Hope VI is a separate process. See guidance on HUD's website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

**Mixed Finance Modernization or Development.** 1) A description of any housing (including name, project number (if known) and unit count) for which the PHA will apply for Mixed Finance Modernization or Development; and 2) A timetable for the submission of applications or proposals. The application and approval process for Mixed Finance Modernization or Development is a separate process. See guidance on HUD's website at: <http://www.hud.gov/offices/pih/programs/ph/hope6/index.cfm>. (Notice PIH 2010-30)

**Demolition and/or Disposition.** Describe any public housing projects owned by the PHA and subject to ACCs (including name, project number and unit numbers [or addresses]), and the number of affected units along with their sizes and accessibility features) for which the PHA will apply or is currently pending for demolition or disposition; and (2) A timetable for the demolition or disposition. This statement must be submitted to the extent that approved and/or pending demolition and/or disposition has changed. The application and approval process for demolition and/or disposition is a separate process. See guidance on HUD's website at: [http://www.hud.gov/offices/pih/centers/sac/demo\\_dispo/index.cfm](http://www.hud.gov/offices/pih/centers/sac/demo_dispo/index.cfm). (24 CFR §903.7(h))

**Conversion of Public Housing.** Describe any public housing building(s) (including project number and unit count) owned by the PHA that the PHA is required to convert or plans to voluntarily convert to tenant-based assistance; 2) An analysis of the projects or buildings required to be converted; and 3) A statement of the amount of assistance received to be used for rental assistance or other housing assistance in connection with such conversion. See guidance on HUD's website at: <http://www.hud.gov/offices/pih/centers/sac/conversion.cfm>. (24 CFR §903.7(j))

**Project-Based Vouchers.** Describe any plans to use HCVs for new project-based vouchers. (24 CFR §983.57(b)(1)) If using project-based vouchers, provide the projected number of project-based units and general locations, and describe how project-basing would be consistent with the PHA Plan.

**Other Capital Grant Programs** (i.e., Capital Fund Community Facilities Grants or Emergency Safety and Security Grants).

**B.3 Progress Report.** For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year PHA Plan. (24 CFR §903.7(r)(1))

**B.4 Most Recent Fiscal Year Audit.** If the results of the most recent fiscal year audit for the PHA included any findings, mark "yes" and describe those findings in the space provided. (24 CFR §903.7(p))

#### C. Other Document and/or Certification Requirements

**C.1 Certification Listing Policies and Programs that the PHA has Revised since Submission of its Last Annual Plan.** Provide a certification that the following plan elements have been revised, provided to the RAB for comment before implementation, approved by the PHA board, and made available for review and inspection by the public. This requirement is satisfied by completing and submitting form HUD-50077 SM-HP.

**C.2 Civil Rights Certification.** Form HUD-50077 SM-HP, *PHA Certifications of Compliance with the PHA Plans and Related Regulation*, must be submitted by the PHA as an electronic attachment to the PHA Plan. This includes all certifications relating to Civil Rights and related regulations. A PHA will be considered in compliance with the AFFH Certification if: it can document that it examines its programs and proposed programs to identify any impediments to fair housing choice within those programs; addresses those impediments in a reasonable fashion in view of the resources available; works with the local jurisdiction to implement any of the jurisdiction's initiatives to affirmatively further fair housing; and assures that the annual plan is consistent with any applicable Consolidated Plan for its jurisdiction. (24 CFR §903.7(o))

**C.3 Resident Advisory Board (RAB) comments.** If the RAB provided comments to the annual plan, mark "yes," submit the comments as an attachment to the Plan and describe the analysis of the comments and the PHA's decision made on these recommendations. (24 CFR §903.13(c), 24 CFR §903.19)

**C.4 Certification by State or Local Officials.** Form HUD-50077-SL, *Certification by State or Local Officials of PHA Plans Consistency with the Consolidated Plan*, must be submitted by the PHA as an electronic attachment to the PHA Plan. (24 CFR §903.15)

**D. Statement of Capital Improvements.** PHAs that receive funding from the Capital Fund Program (CFP) must complete this section. (24 CFR 903.7 (g))

**D.1 Capital Improvements.** In order to comply with this requirement, the PHA must reference the most recent HUD approved Capital Fund 5 Year Action Plan. PHAs can reference the form by including the following language in Section C. 8.0 of the PHA Plan Template: "See HUD Form 50075.2 approved by HUD on XX/XX/XXXX."

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This information collection is authorized by Section 511 of the Quality Housing and Work Responsibility Act, which added a new section 5A to the U.S. Housing Act of 1937, as amended, which introduced the 5-Year and Annual PHA Plan. The 5-Year and Annual PHA Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families.

Public reporting burden for this information collection is estimated to average 16.64 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and respondents are not required to complete this form, unless it displays a currently valid OMB Control Number.

**Privacy Act Notice.** The United States Department of Housing and Urban Development is authorized to solicit the information requested in this form by virtue of Title 12, U.S. Code, Section 1701 et seq., and regulations promulgated thereunder at Title 12, Code of Federal Regulations. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

**ADMINISTRATIVE PLAN**

**FOR THE**

**HOUSING CHOICE VOUCHER**

**PROGRAM**

Approved by the HA Board of Commissioners: 09/17/2018

Submitted to HUD: 10/18/2018

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GLOSSARY

## CHAPTER 1- OVERVIEW OF THE PROGRAM AND PLAN

### INTRODUCTION

The PHA receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The PHA is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. The PHA enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. The PHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the PHA and its programs with emphasis on the HCV program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of the PHA, its jurisdiction, its programs, and its mission and intent.

Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

### PART I: THE PHA

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#### 1-I.A. OVERVIEW

This part explains the origin of the PHA's creation and authorization, the general structure of the organization, and the relationship between the PHA Board and staff.

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### 1-I.B. ORGANIZATION AND STRUCTURE OF THE PHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the **Lakeland Housing Authority** for the jurisdiction of **City of Lakeland/ County of Polk**.

The officials of a PHA are known as commissioners or, collectively, as the board of commissioners. Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation, establishing policies under which the PHA conducts business, ensuring that policies are followed by PHA staff and ensuring that the PHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of the PHA are taken through written resolutions, adopted by the board of commissioners and entered into the official records of the PHA.

The principal staff member of the PHA is the executive director (ED), hired and appointed by the board of commissioners. The executive director is directly responsible for carrying out the policies established by the board and is delegated the responsibility for hiring, training and supervising the PHA staff in order to manage the day-to-day operations of the PHA. The executive director is responsible for ensuring compliance with federal and state laws and directives for the programs managed. In addition, the executive director's duties include budgeting and financial planning for the agency.

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### 1-I.C. PHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides guiding direction for developing strategy, defining critical success factors, searching out key opportunities, making resource allocation choices, satisfying clients and stakeholders, and making decisions.

#### LHA Policy

To provide quality, affordable housing and self-sufficiency opportunities in an effective and professional manner.

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#### 1-I.D. THE PHA'S PROGRAMS

The following programs are included under this administrative plan:

LHA Policy

The PHA's administrative plan is applicable to the operation of the Housing Choice Voucher program. In addition, the administrative plan addresses policies for the following special programs:

Family Self Sufficiency

Manufactured home (where family owns the home and leases the space)

Homeownership

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#### 1-I.E. THE PHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, the PHA is committed to providing excellent service to HCV program participants, owners, and to the community. The PHA's standards include:

- Administer applicable federal and state laws and regulations to achieve high ratings in performance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the PHA's mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the PHA's support systems and a high level of commitment to our employees and their development.
- The PHA will make every effort to keep program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them.

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### 1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the reader to better understand the program.

The United States Housing Act of 1937 (the “Act”) is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. Assuming that the housing met certain basic physical standards of quality (“housing quality standards”) and was within certain HUD-established rent limitations (“fair market rents”), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family’s adjusted income, with the remainder of the rent paid by the program.

Another unique feature of the Certificate program was that the rental assistance remained with the eligible family, if the family chose to move to another privately-owned rental unit that met program requirements (in contrast to the public housing program where the rental assistance remains with the unit, should the family decide to move). Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

However, the Voucher program permitted families more options in housing selection. Rental housing still had to meet the basic housing quality standards, but there was no fair market rent limitation on rent. In addition, family contribution to rent was not set at a limit of 30 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30 percent of their adjusted income for rent.

From 1987 through 1999, public housing agencies managed both the Certificate and Voucher tenant-based assistance programs, with separate rules and requirements for each. From 1994 through 1998, HUD published a series of new rules, known as “conforming” rules, to more closely combine and align the two similar housing programs, to the extent permitted by the law.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent.

The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

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### 1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The PHA is afforded choices in the operation of the program which are included in the PHA’s administrative plan, a document approved by the board of commissioners of the PHA.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in the PHA’s jurisdiction and may also be eligible to move under portability to other PHAs’ jurisdictions.

When a family is determined to be eligible for the program and funding is available, the PHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the PHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. The PHA continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

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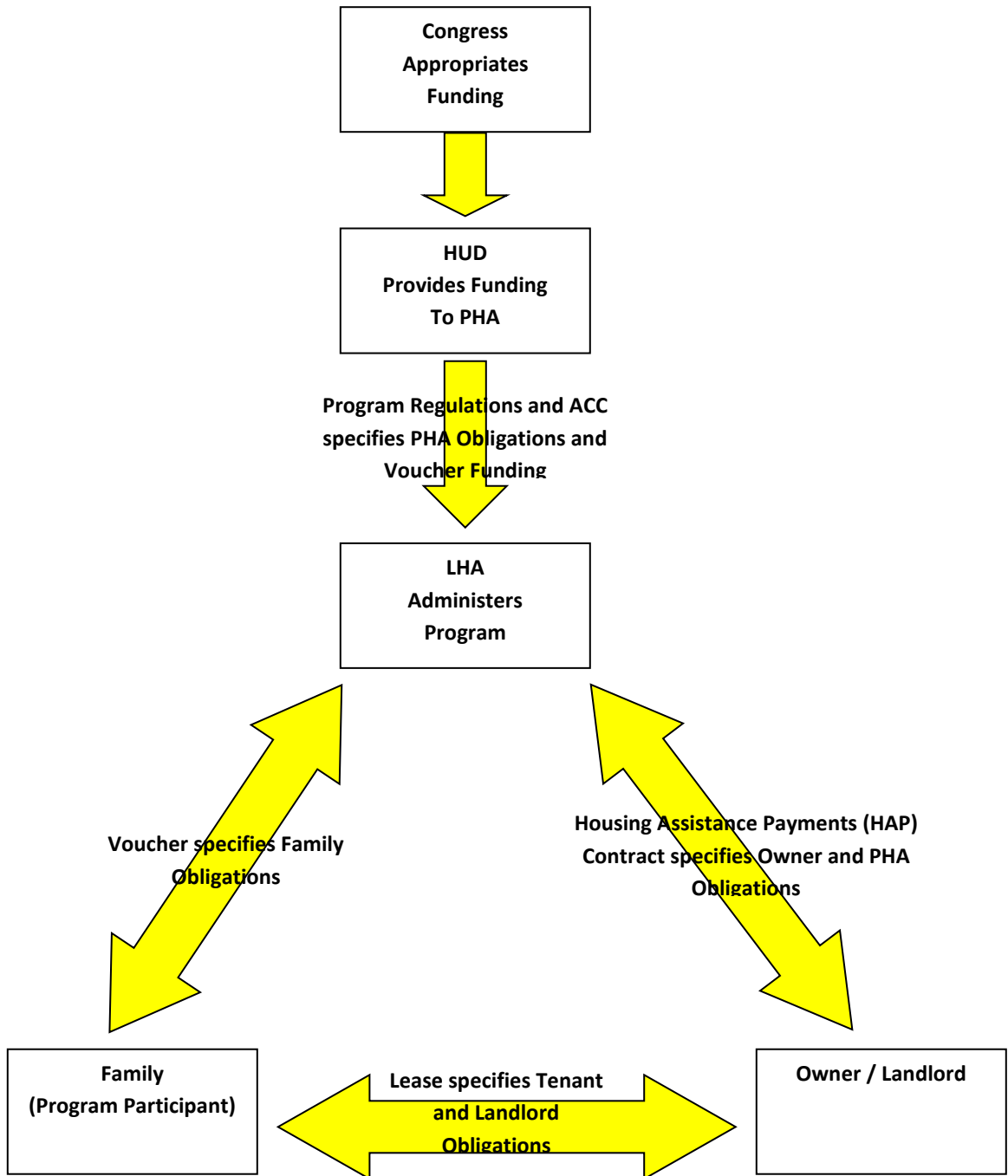
### 1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, the PHA enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The PHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

For the HCV program to work and be successful, all parties involved – HUD, the PHA, the owner, and the family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

The chart on the following page illustrates key aspects of these relationships.

THE HCV RELATIONSHIPS:





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## WHAT DOES HUD DO?

HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV housing program legislation passed by Congress;
- Allocate HCV program funds to PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- Monitor PHA compliance with HCV program requirements and PHA performance in program administration.

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## WHAT DOES THE PHA DO?

The PHA administers the HCV program under contract with HUD and has the following major responsibilities:

- Establish local policies to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue vouchers to eligible families and provide information on how to lease a unit;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, the PHA's administrative plan, and other applicable federal, state and local laws.

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## WHAT DOES THE OWNER DO?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.
  - The PHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
  - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract executed with the PHA;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

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## WHAT DOES THE FAMILY DO?

The family has the following responsibilities:

- Provide the PHA with complete and accurate information as determined by the PHA to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing;
- Attend all appointments scheduled by the PHA;
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the PHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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## 1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

## PART III: THE HCV ADMINISTRATIVE PLAN

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### 1-III.A. OVERVIEW AND PURPOSE OF THE PLAN

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the PHA's agency plan. This administrative plan is a supporting document to the PHA agency plan, and is available for public review as required by CFR 24 Part 903.

This administrative plan is set forth to define the PHA's local policies for operation of the housing programs in accordance with federal laws and regulations. All issues related to the HCV program not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices, and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

The PHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of PHA staff shall be in compliance with the PHA's personnel policy and HUD regulations as well as all federal, state and local fair housing laws and regulations.

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### 1-III.B. CONTENTS OF THE PLAN [24 CFR 982.54]

The HUD regulations at 24 CFR 982.54 define the policies that must be included in the administrative plan. They are as follow:

- Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list (Chapter 4);
- Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must

describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension (Chapter 5);

- Any special rules for use of available funds when HUD provides funding to the PHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the PHA of amounts the family owes the PHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

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## MANDATORY VS. DISCRETIONARY POLICY

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects PHAs to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the PHA discretion. The PHA's administrative plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

Creating policies based upon HUD guidance is not mandatory, but provides a PHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a PHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but PHAs should carefully think through those decisions.

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### 1-III.C. ORGANIZATION OF THE PLAN

The plan is organized to provide information to users in particular areas of operation.

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### 1-III.D. UPDATING AND REVISING THE PLAN

The PHA will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

#### **LHA Policy**

**The LHA will review and update the plan as often as needed, to reflect changes in regulations, PHA operations, or when needed to ensure staff consistency in operation.**

## CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY

### INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the PHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and PHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the PHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the PHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

### PART I: NONDISCRIMINATION

#### 2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The PHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975

- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)

When more than one civil rights law applies to a situation, the laws will be read and applied together.

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted will also apply.

LHA Policy

No state or local nondiscrimination laws or ordinances apply.

## 2-I.B. NONDISCRIMINATION

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as PHA policies, can prohibit discrimination based on other factors.

The PHA shall not discriminate because of race, color, sex, religion, familial status, age, disability or national origin (called “protected classes”)

Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

The PHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12].

LHA Policy

The LHA does not identify any additional protected classes.

The PHA will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class



- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

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## PROVIDING INFORMATION TO FAMILIES AND OWNERS

The PHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the PHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

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## DISCRIMINATION COMPLAINTS

If an applicant or participant believes that any family member has been discriminated against by the PHA or an owner, the family should advise the PHA. HUD requires the PHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the PHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

- Upon receipt of a housing discrimination complaint, the PHA is required to:
- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]

### LHA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify the LHA either orally or in writing.

Within 20 business days of receiving the complaint, the LHA will provide a written notice to those alleged to have violated the rule. The LHA will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

The LHA will attempt to remedy discrimination complaints made against the LHA and will conduct an investigation into all allegations of discrimination.

Within 20 business days following the conclusion of the LHA's investigation, the LHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The LHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

## PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

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### 2-II.A. OVERVIEW

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program.

The PHA must ensure that persons with disabilities have full access to the PHA's programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.

#### LHA Policy

The PHA will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the PHA, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

The contact information will be provided to process requests for accommodation.

The LHA will display posters and other housing information and signage in locations throughout the LHA's office in such a manner as to be easily readable from a wheelchair.

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### 2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an “undue financial and administrative burden” for the PHA, or result in a “fundamental alteration” in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

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#### TYPES OF REASONABLE ACCOMMODATIONS

When needed, the PHA will modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits

- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with PHA staff.

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#### 2-II.C. REQUEST FOR AN ACCOMMODATION

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the PHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to the PHA's programs and services.

If the need for the accommodation is not readily apparent or known to the PHA, the family must explain the relationship between the requested accommodation and the disability. There must be an identifiable connection, or nexus, between the requested accommodation and the individual's disability.

##### LHA Policy

The LHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, the PHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

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## 2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, the PHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to the PHA's programs and services.

If a person's disability is obvious or otherwise known to the PHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to the PHA, the PHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the PHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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## 2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

[Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26].

The PHA must approve a request for an accommodation if the following three conditions are met:

- The request was made by or on behalf of a person with a disability.
- There is a disability-related need for the accommodation.
- The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on the PHA, or fundamentally alter the nature of the PHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of the PHA's program with respect to the number of employees, type of facilities and size of budget, type of operation including composition and structure of workforce, the nature and cost of the requested accommodation, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, the PHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that the PHA may verify the need for the requested accommodation.

### LHA Policy

After a request for an accommodation is presented, the LHA will respond, in writing, within 20 business days.

If the LHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the LHA's operations), the LHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If the LHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the LHA will notify the family, in writing, of its determination within 20 business days from the date of the most recent discussion or communication with the family.

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## 2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

HUD regulations require the PHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, the PHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

### LHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.

To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with LHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

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## 2-II.G. PHYSICAL ACCESSIBILITY

The PHA must comply with a variety of regulations pertaining to physical accessibility, including the following:

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

The PHA's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

- This plan describes the key policies that govern the PHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to the PHA and will assist the family in locating an available accessible unit, if necessary.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

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## 2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A PHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 982.552 (2)(iv)].

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

When a participant family's assistance is terminated, the notice of termination must inform them of the PHA's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the PHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the PHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the PHA must make the accommodation.

## PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

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### 2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

The PHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

LEP is defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this administrative plan, LEP persons are HCV applicants and participants, and parents and family members of applicants and participants.

In order to determine the level of access needed by LEP persons, the PHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the PHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the PHA.



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### 2-III.B. ORAL INTERPRETATION

The PHA will offer competent interpretation services free of charge, upon request, to the LEP person.

#### LHA Policy

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the LHA. The interpreter may be a family member or friend.

The LHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible and possible, according to its language assistance plan (LAP), the PHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents.

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### 2-III.C. WRITTEN TRANSLATION

Translation is the replacement of a written text from one language into an equivalent written text in another language.

#### LHA Policy

In order to comply with written-translation obligations, the PHA will take the following steps:

The LHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the PHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

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## 2-III.D. IMPLEMENTATION PLAN

After completing the four-factor analysis and deciding what language assistance services are appropriate, the PHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If the PHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to the PHA's Housing Choice Voucher program and services.

### LHA Policy

If it is determined that the LHA serves very few LEP persons, and the LHA has very limited resources, the LHA will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the LHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

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EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER  
FEDERAL CIVIL RIGHTS LAWS [24 CFR PARTS 8.3 AND 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the PHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.

## CHAPTER 3- ELIGIBILITY

### INTRODUCTION

The PHA is responsible for ensuring that every individual and family admitted to the HCV program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by the PHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

- The applicant family must:
  - Qualify as a family as defined by HUD and the PHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for household members as required.
  - Consent to the PHA's collection and use of family information as provided for in PHA-provided consent forms.
- The PHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the PHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and PHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the PHA to deny assistance.

### PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

#### 3-I.A. OVERVIEW

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the assisted unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

The terms *family* and *household* have different meanings in the HCV program.

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FAMILY

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. The PHA has the discretion to determine if any other group of persons qualifies as a family.

*Gender Identity* means actual or perceived gender characteristics.

*Sexual orientation* means homosexuality, heterosexuality, or bisexuality.

LHA Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application, and must notify the PHA if the family's composition changes.

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HOUSEHOLD

*Household* is a broader term that includes additional people who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

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FAMILY BREAKUP [24 CFR 982.315]

Except under the following conditions, the PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, the PHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see section 16-IX.D of this plan.)
- If a court determines the disposition of property between members of the assisted family, the PHA is bound by the court's determination of which family members continue to receive assistance.
-

## LHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals

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### REMAINING MEMBER OF A TENANT FAMILY [24 CFR 5.403]

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on “Caretakers for a Child.”

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### 3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(B)]

*Head of household* means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

#### LHA Policy

The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

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### 3-I.E. SPOUSE, COHEAD, AND OTHER ADULT

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13].

*Spouse* means the marriage partner of the head of household.

#### LHA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *co-head* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

#### LHA Policy

Minors who are emancipated under state law may be designated as a co-head.

*Other adult* means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults.



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### 3-I.F. DEPENDENT [24 CFR 5.603]

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

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#### JOINT CUSTODY OF DEPENDENTS

##### LHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the PHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

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### 3-I.G. FULL-TIME STUDENT [24 CFR 5.603; HCV GB, P. 5-29]

A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent allowance, and (2) the earned income of such an FTS is treated differently from the income of other family members.

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### 3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY

[24 CFR 5.100 AND 5.403, FR NOTICE 02/03/12]

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#### ELDERLY PERSONS

An *elderly person* is a person who is at least 62 years of age.

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#### NEAR-ELDERLY PERSONS

A *near-elderly person* is a person who is 50-61 years of age.

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#### ELDERLY FAMILY

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because elderly families qualify for the elderly family allowance as described in Chapter 6.

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### 3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY

[24 CFR 5.403, FR Notice 02/03/12]

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#### PERSONS WITH DISABILITIES

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the PHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

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#### DISABLED FAMILY

A *disabled family* is one in which the head, spouse, or cohead is a person with disabilities. Identifying disabled families is important because these families qualify for the disabled family allowance as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities, this does not prevent the PHA from denying assistance for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter, or from terminating assistance in accordance with the policies in Chapter 12.

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### 3-I.J. GUESTS [24 CFR 5.100]

A *guest* is a person temporarily staying in the unit with the consent of a member of the household who has expressed or implied authority to so consent.

#### LHA Policy

A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

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### 3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults who are living with an applicant or who have been approved by the PHA to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

#### LHA Policy

A *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

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### 3-I.L. ABSENT FAMILY MEMBERS

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, illness, incarceration, and court order.

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#### DEFINITIONS OF TEMPORARILY AND PERMANENTLY ABSENT

#### LHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

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#### ABSENT STUDENTS

#### LHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

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#### ABSENCES DUE TO PLACEMENT IN FOSTER CARE [24 CFR 5.403]

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

##### LHA Policy

If a child has been placed in foster care, the PHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

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#### ABSENT HEAD, SPOUSE, OR COHEAD

##### LHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

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#### FAMILY MEMBERS PERMANENTLY CONFINED FOR MEDICAL REASONS [HCV GB, P. 5-22]

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

##### LHA Policy

The PHA will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the PHA will consider, any additional documentation or evidence.

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#### RETURN OF PERMANENTLY ABSENT FAMILY MEMBERS

##### LHA Policy

The family must request PHA approval for the return of any adult family members that the PHA previously determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

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### 3-I.M. LIVE-IN AIDE

A *live-in aide* is a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by the family member with disabilities.

The income of a live-in aide is not counted in the calculation of annual income for the family [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not *family* members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

#### LHA Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new, written request-subject to PHA verification-at each annual reexamination.

In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.

The PHA will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

- The person commits drug-related criminal activity or violent criminal activity; or

- The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The PHA will notify the family of its decision in writing within **15 business days** of receiving a request for a live-in aide, including all required documentation related to the request.

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3-II.A. INCOME ELIGIBILITY AND TARGETING

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INCOME LIMITS

HUD establishes income limits for all areas of the country and publishes them annually in the *Federal Register*. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

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DEFINITIONS OF THE INCOME LIMITS [24 CFR 5.603(B)]

*Low-income family.* A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

*Very low-income family.* A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

*Extremely low-income family.* A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

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USING INCOME LIMITS FOR ELIGIBILITY [24 CFR 982.201]

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. In order to be income eligible, an applicant family must be one of the following:

- A *very low-income* family
- A *low-income* family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4]

LHA Policy

The PHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were issued a voucher by the PHA.

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173

- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

HUD permits the PHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction.

LHA Policy

The PHA has not established any additional categories of eligible low-income families.

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[USING INCOME LIMITS FOR TARGETING \[24 CFR 982.201\]](#)

At least 75 percent of the families admitted to the PHA's program during a PHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the PHA demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.



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### 3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, SUBPART E]

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the PHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

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#### DECLARATION [24 CFR 5.508]

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

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#### U.S. CITIZENS AND NATIONALS

In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit the PHA to request additional documentation of their status, such as a passport.

##### LHA Policy

Family members who declare citizenship or national status will not be required to provide additional documentation unless the LHA receives information indicating that an individual's declaration may not be accurate.

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#### ELIGIBLE NONCITIZENS

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

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## INELIGIBLE NONCITIZENS

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The PHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

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## MIXED FAMILIES

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

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## INELIGIBLE FAMILIES [24 CFR 5.514(D), (E), AND (F)]

A PHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by the PHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the PHA in accordance with program requirements [24 CFR 5.512(a)].

### LHA Policy

The PHA will not provide assistance to a family before the verification of at least one family member.

When a PHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the PHA. The informal hearing with the PHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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#### TIMEFRAME FOR DETERMINATION OF CITIZENSHIP STATUS [24 CFR 5.508(G)]

For new occupants joining the assisted family, the PHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, the PHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

##### PHA Policy

The PHA will verify the citizenship status of applicants at the time other eligibility factors are determined.

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#### 3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 AND 5.218, NOTICE PIH 2012-10]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7.

*Note:* These requirements do not apply to noncitizens who do not contend eligible immigration status.

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the SSA determined was invalid, or has been issued a new SSN must submit their complete and accurate SSN and the documentation required to verify the SSN at the time of the next interim or annual reexamination or recertification. Participants age 62 or older as of January 31, 2010, whose determination of eligibility was begun before January 31, 2010, are exempt from this requirement and remain exempt even if they move to a new assisted unit.

The PHA must deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements contained in 24 CFR 5.216.

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3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230; HCV GB, P. 5-13]

HUD requires each adult family member, and the head of household, spouse, or cohead, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

The PHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

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### 3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

[24 CFR 5.612, FR NOTICE 4/10/06]

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's eligibility.

The new law does not apply to students who reside with parents who are applying to receive HCV assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

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#### DEFINITIONS

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR 4/10/06, p. 18148].

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#### DEPENDENT CHILD

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

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## INDEPENDENT STUDENT

### LHA Policy

The PHA will consider a student “independent” from his or her parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education’s definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

Be at least 24 years old by December 31 of the award year for which aid is sought

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

Be a graduate or professional student

Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents’ most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

The PHA will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

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## INSTITUTION OF HIGHER EDUCATION

The PHA will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

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## PARENTS

### LHA Policy

For purposes of student eligibility restrictions, the definition of *parents* includes biological or adoptive parents, stepparents (as long as they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc).

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## PERSON WITH DISABILITIES

The PHA will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

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## VETERAN

### LHA Policy

A *veteran* is a person who served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

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## DETERMINING STUDENT ELIGIBILITY

If a student is applying for assistance on his/her own, apart from his/her parents, the PHA must determine whether the student is subject to the eligibility restrictions contained in 24 CFR 5.612. If the student is subject to those restrictions, the PHA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

### LHA Policy

For any student who is subject to the 5.612 restrictions, the PHA will:

- Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

- Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

If the PHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the PHA will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.



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## DETERMINING PARENTAL INCOME ELIGIBILITY

### LHA Policy

For any student who is subject to the 5.612 restrictions and who does not satisfy the definition of *independent student* in this section, the PHA will determine the income eligibility of the student's parents as follows:

If the student's parents are married and living together, the PHA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, the PHA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, the PHA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, the PHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The PHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the PHA will use the income limits for the jurisdiction in which the parents live.

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### 3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

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#### FORMS OF DENIAL [24 CFR 982.552(A)(2); HCV GB, P. 5-35]

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list
- Denying or withdrawing a voucher
- Not approving a request for tenancy or refusing to enter into a HAP contract
- Refusing to process a request for or to provide assistance under portability procedures

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#### PROHIBITED REASONS FOR DENIAL OF PROGRAM ASSISTANCE [24 CFR 982.202(B), 24 CFR 5.2005(B)]

HUD rules prohibit denial of program assistance to the program based on any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the PHA's jurisdiction under portability. (See Chapter 10.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance (See section 3-III.G.)

HUD requires the PHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, the PHA to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

LHA Policy

The PHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the PHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the PHA, or the person who committed the crime, is no longer living in the household.

- The PHA determines that any household member is currently engaged in the use of illegal drugs.

LHA Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous six months.

- The PHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

LHA Policy

In determining reasonable cause, the PHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The PHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program

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### 3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

HUD permits, but does not require, the PHA to deny assistance for the reasons discussed in this section.

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#### CRIMINAL ACTIVITY [24 CFR 982.553]

HUD permits, but does not require, the PHA to deny assistance if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the family would receive assistance, certain types of criminal activity.

##### LHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance.

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

Criminal activity that may threaten the health or safety of property owners, management staff, and persons performing contract administration functions or other responsibilities on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent).

*Immediate vicinity* means within a three-block radius of the premises.

Evidence of such criminal activity includes, but is not limited to:

Any conviction for drug-related or violent criminal activity within the past 5 years.

Records of arrests for drug-related or violent criminal activity within the past 5 years, although a record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.

In making its decision to deny assistance, the PHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing:

LHA Policy

The PHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program.

The PHA **will** deny assistance to an applicant family if:

The family does not provide information that the PHA or HUD determines is necessary in the administration of the program.

The family does not provide complete and true information to the PHA.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.

The family has breached the terms of a repayment agreement entered into with the PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

*Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny assistance, the PHA will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

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SCREENING FOR ELIGIBILITY

PHAs are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the PHA in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the PHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

LHA Policy

The PHA will perform a criminal background check through local law enforcement for every adult household member.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the PHA will request a fingerprint card and will request information from the National Crime Information center (NCIC).

PHAs are required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

LHA Policy

The PHA will use the National Sex Offender database to screen applicants for admission.

Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If the PHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

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SCREENING FOR SUITABILITY AS A TENANT [24 CFR 982.307]

The PHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The PHA has the authority to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

LHA Policy

The PHA will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The PHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HUD requires the PHA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the PHA to provide owners with additional information, as long as families are notified that the information will be provided, and the same type of information is provided to all owners.

The PHA may not disclose to the owner any confidential information provided to the PHA by the family in response to a PHA request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

LHA Policy

The PHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the initial HQS inspection or before. The PHA will not provide any additional information to the owner, such as tenancy history or criminal history.

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### 3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

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#### EVIDENCE [24 CFR 982.553(C)]

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##### LHA Policy

The PHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

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#### CONSIDERATION OF CIRCUMSTANCES [24 CFR 982.552(C)(2)]

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HUD authorizes the PHA to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandatory (see Section 3-III.B).

##### LHA Policy

The PHA will consider the following facts and circumstances prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure to act

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) a victim of domestic violence, dating violence, sexual assault, or stalking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future



While a record of arrest(s) will not be used as the basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:

- Any statements made by witnesses or the applicant not included in the police report

- Whether criminal charges were filed

- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

- The PHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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## REMOVAL OF A FAMILY MEMBER'S NAME FROM THE APPLICATION

Should the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, the PHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

### LHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit, stay as a guest, or reside in the assisted unit.

After admission to the program, the family must present evidence of the former family member's current address upon PHA request.

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## REASONABLE ACCOMMODATION [24 CFR 982.552(C)(2)(IV)]

If the family includes a person with disabilities, the PHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

### LHA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the PHA will determine whether the behavior is related to the stated disability. If so, upon the family's request, the PHA will determine whether admitting the family as a reasonable accommodation is appropriate. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

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### 3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

If the PHA is eligible for assistance, the PHA will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

If the PHA determines that a family is not eligible for the program for any reason, the family must be notified promptly. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

#### LHA Policy

The family will be notified of a decision to deny assistance in writing within 15 business days of the determination.

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the PHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

#### LHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the PHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the PHA to dispute the information within that 10-day period, the PHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, sexual assault or stalking are contained in Section 3-III.G.

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### 3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING

The Violence against Women Act of 2013-Final Rule of 2016 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program “on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.”

Definitions of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

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#### NOTIFICATION

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of rights and the form HUD-50066 at the time the applicant is denied.

##### LHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the PHA’s policies. Therefore, if the PHA makes a determination to deny assistance to an applicant family, the PHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. The PHA will request in writing that an applicant wishing to claim protection under VAWA notify the PHA within 10 business days.

Upon making an eligibility determination, the PHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-53825382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances: (1) when a family is notified of its eligibility; or (2) when a family is notified of its ineligibility.

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## DOCUMENTATION

### VICTIM DOCUMENTATION [24 CFR 5.2007]

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#### LHA Policy

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault or stalking, the PHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D of this plan.

### PERPETRATOR DOCUMENTATION

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#### LHA Policy

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit

Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### **Person with Disabilities [24 CFR 5.403]**

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

#### **(A) In General**

The term “developmental disability” means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
- (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

## **(B) Infants and Young Children**

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

### **Individual with Handicaps [24 CFR 8.3]**

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.



**Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]**

*Institution of Higher Education* shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1001*

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1002*

- (a) Definition of institution of higher education for purposes of student assistance programs
- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
- (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
- (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
- (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
- (2) Institutions outside the United States
- (A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
- (i) In the case of a graduate medical school located outside the United States—
- (I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
- (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
- (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

- (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
  - (B) Advisory panel
    - (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
      - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
      - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
    - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
  - (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
  - (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

- (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

- (1) Principal criteria. For the purpose of this section, the term “postsecondary vocational institution” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
  - (C) Has been in existence for at least 2 years.
- (2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

### INTRODUCTION

When a family wishes to receive assistance under the HCV program, the family must submit an application that provides the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA must select families from the waiting list in accordance with HUD requirements and PHA policies as stated in the administrative plan and the annual plan.

The PHA is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the PHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that the PHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the PHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and PHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how the PHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process the PHA will use to keep the waiting list current.

Part III: Selection for HCV Assistance. This part describes the policies that guide the PHA in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that the PHA has the information needed to make a final eligibility determination.

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4-I.A. OVERVIEW

This part describes the PHA policies for making applications available, accepting applications making preliminary determinations of eligibility, and the placement of applicants on the waiting list. This part also describes the PHA's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

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4-I.B. APPLYING FOR ASSISTANCE [HCV GB, PP. 4-11 – 4-16, NOTICE PIH 2009-36]

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the PHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA. The PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

LHA Policy

Depending upon the length of time that applicants may need to wait to receive assistance, the PHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the PHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

Families may obtain application forms from the PHA's office during normal business hours. Families may also request – by telephone or by mail – that an application be mailed to them via first class mail.

Completed applications must be returned to the PHA by mail, by fax, or submitted in person during normal business hours. Applications must be complete in order to be accepted by the PHA for processing. If an application is incomplete, the PHA will notify the family of the additional information required.

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#### 4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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##### ELDERLY AND DISABLED POPULATIONS [24 CFR 8 AND HCV GB, PP. 4-11 – 4-13]

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The PHA must take steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard PHA application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The PHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the PHA must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the PHA's policies related to providing reasonable accommodations for people with disabilities.

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##### LIMITED ENGLISH PROFICIENCY

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PHAs are required to take reasonable steps to ensure equal access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on the PHA's policies related to ensuring access to people with limited English proficiency (LEP).

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#### 4-I.D. PLACEMENT ON THE WAITING LIST

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The PHA must review each complete application received and make a preliminary assessment of the family's eligibility. The PHA must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the PHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list [24 CFR 982.202(c)].

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##### INELIGIBLE FOR PLACEMENT ON THE WAITING LIST

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###### LHA Policy

If the PHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the PHA will send written notification of the ineligibility determination within 30 business days of receiving a complete application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

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##### ELIGIBLE FOR PLACEMENT ON THE WAITING LIST

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###### LHA Policy

The PHA will send written notification of the preliminary eligibility determination within 30 business days of receiving a complete application.

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Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the PHA.

## PART II: MANAGING THE WAITING LIST

### 4-II.A. OVERVIEW

The PHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a PHA may structure its waiting list and how families must be treated if they apply for assistance from a PHA that administers more than one assisted housing program.

### 4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 AND 205]

The PHA's HCV waiting list must be organized in such a manner to allow the PHA to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

The waiting list must contain the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any local preference;
- Racial or ethnic designation of the head of household.

HUD requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

#### LHA Policy

The PHA will maintain a single waiting list for the HCV program.

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program the PHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs.

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs.

A family's decision to apply for, receive, or refuse other housing assistance must not affect the family's placement on the HCV waiting list, or any preferences for which the family may qualify.

#### LHA Policy

The LHA will not merge the HCV waiting list with the waiting list for any other program the LHA operates.

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### 4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

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#### CLOSING THE WAITING LIST

A PHA is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance. Alternatively, the PHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

#### LHA Policy

The PHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the PHA has particular preferences or funding criteria that require a specific category of family, the PHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

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#### REOPENING THE WAITING LIST

If the waiting list has been closed, it cannot be reopened until the PHA publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

#### LHA Policy

The PHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

The PHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to: The Ledger, local radio stations, etc.

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### 4-II.D. FAMILY OUTREACH [HCV GB, PP. 4-2 TO 4-4]

The PHA must conduct outreach as necessary to ensure that the PHA has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires the PHA to admit a specified percentage of extremely low-income families to the program (see Chapter 4, Part III), the PHA may need to conduct special outreach to ensure that an adequate number of such families apply for assistance [HCV GB, p. 4-20 to 4-21].

PHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class

PHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, as needed, any of the following activities:

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

#### LHA Policy

The PHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the PHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

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#### 4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

##### PHA Policy

While the family is on the waiting list, the family must immediately inform the PHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

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#### 4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list.

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##### PURGING THE WAITING LIST

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to a PHA request for information or updates, and the PHA determines that the family did not respond because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

##### LHA Policy

The waiting list will be updated annually to ensure that all applicants and applicant information is current and timely.

To update the waiting list, the LHA will send an update request via first class mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that the PHA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by the PHA not later than 15 business days from the date of the LHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the PHA may reinstate the family if it is determined that the lack of response was due to PHA error, or to circumstances beyond the family's control.

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## REMOVAL FROM THE WAITING LIST

### LHA Policy

If at any time an applicant family is on the waiting list, the PHA determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list.

If a family is removed from the waiting list because the PHA has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the PHA's decision (see Chapter 16) [24 CFR 982.201(f)].

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## PART III: SELECTION FOR HCV ASSISTANCE

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### 4-III.A. OVERVIEW

As vouchers become available, families on the waiting list must be selected for assistance in accordance with the policies described in this part.

The order in which families are selected from the waiting list depends on the selection method chosen by the PHA and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected from the waiting list.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

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### 4-III.B. SELECTION AND HCV FUNDING SOURCES

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#### SPECIAL ADMISSIONS [24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the PHA may admit such families whether or not they are on the waiting list, and, if they are on the waiting list, without considering the family's position on the waiting list. These families are considered non-waiting list selections. The PHA must maintain records showing that such families were admitted with special program funding.

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#### TARGETED FUNDING [24 CFR 982.204(E)]

HUD may award a PHA funding for a specified category of families on the waiting list. The PHA must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

### LHA Policy

The PHA administers or may administers the following types of targeted funding:

VASH (Veterans) Vouchers

NonElderly Disabled Vouchers

Family Unification Program

Mainstream

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### REGULAR HCV FUNDING

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

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### 4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the PHA will use [24 CFR 982.202(d)].

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### LOCAL PREFERENCES [24 CFR 982.207; HCV P. 4-16]

PHAs are permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

### LHA Policy

The Lakeland Housing Authority will select families based on the following preferences based on local housing needs and priorities. They are consistent with the Lakeland Housing Authority's Agency Plan and the Consolidated Plan that covers our jurisdiction.

- Working Family Preference/Disabled/Veteran
- Absence of a Proscribed Crime for All Members of the Household
- Absence of a Misdemeanor for All Members of the Household
- A person relocated from a public housing site who wants to return to that site and the site has no or limited public housing.
- Graduates of a Lakeland-based approved transitional housing program for homeless persons.
- Family Unification Program – a family in the process of reunification under the management of a Protective Services Agency in partnership with the Lakeland Housing Authority.

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### WORKING FAMILY PREFERENCE:

A working family is defined as a family whose head, spouse/cohead or sole member is employed. This also includes families who are engaged in self-sufficiency activities such as secondary, vocational, or employment training such as on the job training. Remedial education is not considered as vocational training.

Threshold limits to meet this definition are employment of three (3) months consecutively or currently employed and having been employed nine months of the last twelve (12) months. For families in training, the qualifying adult(s) must be enrolled in a full-time training program for three (3) months as defined by the school or training agency.

Preference will be extended to elderly and disabled families as defined in this Plan.

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#### ABSENCE OF A PROSCRIBED CRIME FOR ALL MEMBERS OF THE HOUSEHOLD

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An applicant household that has no criminal record (See glossary) as shown on criminal records checks will be considered as qualifying for this preference.

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#### ABSENCE OF A MISDEMEANOR FOR ALL MEMBERS OF THE HOUSEHOLD

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An applicant household that has no misdemeanor criminal record as shown on criminal records checks will be considered as qualifying for this preference.

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#### TRANSITIONAL HOUSING GRADUATES

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A number of Lakeland agencies offer training programs for homeless persons. This preference goes to graduates of these programs.

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#### FAMILY UNIFICATION PROGRAM

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A number of Lakeland agencies offer assistance with the unification of family. This preference goes to families that are in the process or required to secured housing in order to regain custody of dependents.

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#### INCOME TARGETING REQUIREMENT [24 CFR 982.201(B)(2)]

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HUD requires that extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during the PHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low-income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

LHA Policy

The LHA will monitor progress in meeting the income targeting requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.



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## ORDER OF SELECTION

The PHA system of preferences may select families based on local preferences according to the date and time of application or by a random selection process (lottery) [24 CFR 982.207(c)]. If a PHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

### LHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the PHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the LHA. Documentation will be maintained by the LHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the LHA does not have to ask higher placed families each time targeted selections are made.

Based on the above preferences, the Lakeland Housing Authority will select families according to the following preferences based on our local housing needs and priorities:

Working Families/Disabled/Veterans	50 points
Absence of a Proscribed Crime Preference	10 points
Absence of a Misdemeanor Preference	5 points
Transitional Homeless Housing Program Graduates	300 points
Certified participant of a Family Unification Program	300 points

Among applicants with equal preference status, the waiting list will be organized by date and time of receipt of the finished application.

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## HOUSING FEDERAL DISASTER VICTIMS

Notwithstanding the above, the Lakeland Housing Authority Executive Director is authorized to waive any of Lakeland Housing Authority's preferences, policies, or procedures in order to accommodate requests made by an authorized HUD representative, as a result of a Federal Disaster declared by the President of the United States, to assist in the disaster recovery.

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#### 4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the PHA must notify the family [24 CFR 982.554(a)].

##### LHA Policy

The PHA will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview

Who is required to attend the interview?

All documents that must be provided at the interview, including information about what constitutes acceptable documentation

If a notification letter is returned to the PHA with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record, as well as to any known alternate address.

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#### 4-III.E. THE APPLICATION INTERVIEW

HUD recommends that the PHA obtain the information and documentation needed to make an eligibility determination through a face-to-face interview with a PHA representative [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability.

##### LHA Policy

Families selected from the waiting list are required to participate in an eligibility interview.

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the PHA.

The head of household or spouse/co-head must provide acceptable documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity.) If the family representative does not provide the required documentation at the time of the interview, he or she will be required to provide it within 10 business days.

Pending disclosure and documentation of social security numbers, the PHA will allow the family to retain its place on the waiting list for 90 days. If not all household members have disclosed their SSNs at the next time the PHA is issuing vouchers, the PHA will issue a voucher to the next eligible applicant family on the waiting list.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, the PHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the PHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without PHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

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#### 4-III.F. COMPLETING THE APPLICATION PROCESS

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information, the PHA must make a final determination of eligibility (see Chapter 3) and must confirm that the family qualified for any special admission, targeted funding admission, or selection preference that affected the order in which the family was selected from the waiting list.

##### LHA Policy

If the PHA determines that the family is ineligible, the PHA will send written notification of the ineligibility determination within 30 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The PHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If the PHA determines that the family is eligible to receive assistance, the PHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

### INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the PHA must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the PHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and PHA policies related to these topics in two parts:

Part I: Briefings and Family Obligations. This part details the program's requirements for briefing families orally, and for providing written materials describing the program and its requirements. It includes a particular focus on the family's obligations under the program.

Part II: Subsidy Standards and Voucher Issuance. This part discusses the PHA's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

### PART I: BRIEFINGS AND FAMILY OBLIGATIONS

#### 5-I.A. OVERVIEW

HUD regulations require the PHA to conduct mandatory briefings for applicant families who qualify for a voucher. The briefing provides a broad description of owner and family responsibilities, explains the PHA's procedures, and includes instructions on how to lease a unit. This part describes how oral briefings will be conducted, specifies what written information will be provided to families, and lists the family's obligations under the program.

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#### 5-I.B. BRIEFING [24 CFR 982.301]

The PHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the PHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

##### LHA Policy

Briefings will be conducted in group meetings.

In order to receive a housing choice voucher all of the adult members of the family are required to attend the briefing. If they cannot attend the originally scheduled briefing, they may attend a later session. If the family fails to attend two briefings without good cause, they will be denied admission.

Families that attend group briefings and still need individual assistance will be referred to an appropriate PHA staff person.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the PHA will provide translation services in accordance with the PHA's LEP plan (See Chapter 2).

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#### NOTIFICATION AND ATTENDANCE

##### LHA Policy

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing.

If the notice is returned by the post office with no forwarding address, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing will be scheduled for another briefing automatically. The PHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior PHA approval, will be denied assistance (see Chapter 3).

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the PHA's jurisdiction;
- An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction or outside the PHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- The PHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance;
- The advantages of areas that do not have a high concentration of low-income families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Documents and information provided in the briefing packet must include the following:

- The term of the voucher, voucher suspensions, and the PHA's policies on any extensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the PHA determines the payment standard for a family, how the PHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the PHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the PHA policy on providing information about families to prospective owners.
- The PHA subsidy standards including when and how exceptions are made.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the PHA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the PHA may terminate assistance for a participant family because of family action or failure to act.
- PHA informal hearing procedures including when the PHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.



- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.

If the PHA is located in a metropolitan area, the following additional information must be included in the briefing packet in order to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 CFR 985.3(g)]:

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction
- Information about the characteristics of these areas including job opportunities, schools, transportation, and other services
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs with names, addresses, and telephone numbers

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#### ADDITIONAL ITEMS TO BE INCLUDED IN THE BRIEFING PACKET

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2017-12].

##### LHA Policy

The PHA will provide the following additional materials in the briefing packet:

The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*

Information on how to fill out and file a housing discrimination complaint form

Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault, and stalking (see section 16-IX.C)

“Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

“What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 201712

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## 5-I.C. FAMILY OBLIGATIONS

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The PHA must inform families of these obligations during the oral briefing, and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

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### TIME FRAMES FOR REPORTING CHANGES REQUIRED BY FAMILY OBLIGATIONS

#### LHA Policy

Unless otherwise noted below, when family obligations require the family to respond to a request or notify the PHA of a change, notifying the PHA of the request or change within 30 business days is considered prompt notice.

When a family is required to provide notice to the PHA, the notice must be in writing.

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### FAMILY OBLIGATIONS [24 CFR 982.551]

The family obligations of the voucher are listed as follows:

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

#### LHA Policy

Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.

- The family must not commit any serious or repeated violation of the lease.

#### LHA Policy

The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, and destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

- The family must notify the PHA and the owner before moving out of the unit or terminating the lease.

#### LHA Policy

The family must comply with lease requirements regarding written notice to the owner.

The family must provide written notice to the PHA at the same time the owner is notified.

- The family must promptly give the PHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

#### LHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.

- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (sections I.K and I.M), and Chapter 11 (section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

LHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify the PHA when the family is absent from the unit.

#### LHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the PHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

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5-II.A. OVERVIEW

The PHA must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. The PHA must also establish policies related to the issuance of the voucher, to the voucher term, and to any extensions of the voucher term.

The Lakeland Housing Authority may take administrative action at any time, if warranted by HUD funding limitations and/or reductions, to reduce its subsidy standards to two people per bedroom and living area with no exceptions. The Lakeland Housing Authority may take the administrative action at any time to increase its subsidy standards, if funding allows and if necessary to improve or maintain the viability of the program.

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5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]

For each family, the PHA determines the appropriate number of bedrooms under the PHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when the PHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by the PHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the PHA subsidy standards.

## LHA Policy

### LHA Policy

The following standards will apply when the Department determines family unit size:

1. One bedroom subsidy will be assigned for a single person.
2. One bedroom subsidy will be assigned for the Head-of-household and Spouse/Domestic Partner/Co-head.
3. One bedroom subsidy will be assigned for each two (2) persons within the household above and beyond the Head-of-household and Spouse/Domestic Partner/Co-head.
4. Children over the age of 6 of the opposite sex will not be required to share bedroom.

The Department will recognize the unborn child of a pregnant woman.

*Pregnant woman* as defined by the Department includes a person with an unborn child in utero at any stage of development. The family must submit evidence from a medical professional of pregnancy. The family must report the actual birth or miscarriage of the child within fifteen (15) calendar days.

A child who is temporarily away from the home because of placement in foster care will be considered a member of the family in determining the family unit size.

*Temporarily* is defined in this context by the Department as the child being away while the parents are actively seeking custody; regardless of length of time.

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, The Department will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

## **INCREASES IN VOUCHER SIZE FOR PARTICIPANTS**

After initial voucher issuance, the Lakeland Housing Authority will not, except for live-in aides and a reasonable accommodation, increase the voucher size until the family is overcrowded. The Lakeland

Housing Authority will reexamine the subsidy standards annually, upon transfer, and upon changes in household composition for a reduction in the voucher size.

LHA Policy

The PHA will assign one bedroom for each two persons within the household, except in the following circumstances:

Live-in aides will be allocated a separate bedroom. No more than one bedroom will be allocated for a Live-in aide with children. If approving a Live-In aide with children will cause overcrowding in the unit (per HQS) the Live-In aide will be denied.

Single person families will be allocated one bedroom.

The PHA will reference the following chart in determining the appropriate voucher size for a family:

<b>Voucher Size</b>	<b>Persons in Household (Minimum – Maximum)</b>
1 Bedroom	1-2
2 Bedrooms	2-4
3 Bedrooms	3-6
4 Bedrooms	4-8
5 Bedrooms	6-10



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## 5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the PHA may grant an exception to its established subsidy standards if the PHA determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances.

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom. [24CFR 982.402(b)(8).

### LHA Policy

#### LHA Policy

The family must request, in writing, a larger size voucher than indicated by the Lakeland Housing Authority subsidy standards as a reasonable accommodation for a family member with disabilities.

The Lakeland Housing Authority may grant exceptions to the subsidy standards, upon request, providing that the Lakeland Housing Authority determines the exceptions are clearly justified in a compelling manner as a reasonable accommodation for family members with disabilities. However, a reasonable accommodation request will not be considered if there are alternate sleeping areas available to other family members, such as a shared bedroom or living room that if utilized, would free up a separate bedroom for the disabled family member.

The disability **must** meet the HUD definition of disability that requires a reasonable accommodation.

In addition, a larger subsidy standard, the equal of no more than one bedroom, will be allowed for a live-in aide that performs vital assistance, essential to the care and well-being of an elderly, near elderly or disabled family member, that cannot be provided in any other way. However, this larger subsidy standard will not be granted if there are alternate sleeping areas available to other family members that if utilized, would free up a separate bedroom for the live-in aide. If the family must transfer to a larger unit to accommodate a live-in aide, the Lakeland Housing Authority will assist the family with the transfer. A live-in attendant's family members may reside in the unit as long as the unit is not overcrowded according to HQS.

#### **CHANGES IN VOUCHER SIZE**

The voucher size is determined prior to the briefing by comparing the family composition to the Lakeland Housing Authority subsidy standards. The definition of overcrowded for in-place participants is if there are more than two person per bedroom and sleeping area(s) in the unit the family is residing in. The definition of overcrowded for issuance of a voucher for a transfer is if the family's current voucher size is inadequate for the size of the family based on two person per bedroom plus two.

With the exception of a live-in aide or reasonable accommodation, the voucher size will not be increased due to additions to the household until the family is overcrowded.

The voucher size may be increased for a live-in aide or for reasonable accommodation providing there are no alternate sleeping areas available to the family that, if utilized, would free a bedroom for the disabled person or live-in aide's sole use.

A family who transfers will receive a larger voucher size if the family is overcrowded or, if necessary, for a live-in aide or reasonable accommodation. If a family member leaves the household, the voucher size will be reviewed and may be reduced at the next family recertification. The family must receive at least thirty (30) calendar-days advance notification of issuance of appropriate voucher size. If a household member that was part of the original household returns, the voucher size will be reviewed and may increase if it results in overcrowding.

### **UNRESTRICTED ADMISSIONS**

Additions through birth, adoption, court-awarded custody and the return of disabled or minor children to the household do not require prior approval, but the family is still required to report these additions in writing within thirty (30) calendar days of the change, and these additions are still subject to family eligibility requirements, such as criminal history prohibitions. In addition, the voucher size is not increased due to these additions until the family is overcrowded. If the family must transfer, the Lakeland Housing Authority will only increase the voucher size if the family is overcrowded and only to the extent the family is no longer overcrowded.

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#### **5-II.D. VOUCHER ISSUANCE [24 CFR 982.302]**

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the PHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that the PHA has determined the family to be eligible for the program, and that the PHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the PHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in the PHA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after the PHA has determined that the family is eligible for the program based on verification of information received within the 60 days prior to issuance [24 CFR 982.201(e)] and after the family has attended an oral briefing [HCV 8-1].

#### **LHA Policy**

Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

The PHA should have sufficient funds to house an applicant before issuing a voucher. If funds are insufficient to house the family at the top of the waiting list, the PHA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

#### **LHA Policy**

Prior to issuing any vouchers, the PHA will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If the PHA determines that there is insufficient funding after a voucher has been issued, the PHA may rescind the voucher and place the affected family back on the waiting list.

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## 5-II.E. VOUCHER TERM AND EXTENSIONS

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### VOUCHER TERM [24 CFR 982.303]

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The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)].

#### LHA Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period unless the LHA grants an extension.

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### EXTENSIONS OF VOUCHER TERM [24 CFR 982.303(B)]

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The PHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions that the PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA's administrative plan [24 CFR 982.54].

PHAs must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of the PHA's decision to approve or deny an extension. The PHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

#### LHA Policy

The PHA will automatically approve one 30-day extension upon written request from the family.

The PHA will approve additional extensions only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary due to reasons beyond the family's control, as determined by the PHA. Following is a list of extenuating circumstances that the PHA may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

Serious illness or death in the family

Other family emergency

Obstacles due to employment

Whether the family has already submitted requests for tenancy approval that were not approved by the PHA

Whether family size or other special circumstances make it difficult to find a suitable unit

Any request for an additional extension must include the reason(s) an additional extension is necessary. The LHA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

All requests for extensions to the voucher term must be made in writing and submitted to the LHA prior to the expiration date of the voucher (or extended term of the voucher).

The LHA will decide whether to approve or deny an extension request within 15 business days of the date the request is received, and will immediately provide the family written notice of its decision.

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#### SUSPENSIONS OF VOUCHER TERM [24 CFR 982.303(C)]

The PHA must provide for suspension of the initial or any extended term of the voucher from the date the family submits a request for PHA approval of the tenancy until the date the LHA notifies the family in writing whether the request has been approved or denied.

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#### EXPIRATION OF VOUCHER TERM

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the PHA may require that the family reapply, or may place the family on the waiting list with a new application date but without requiring reapplication. Such a family does not become ineligible for the program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

#### LHA Policy

If an applicant family's voucher term or extension expires before the PHA has approved a tenancy, the PHA will require the family to reapply for assistance.

Within 15 business days after the expiration of the voucher term or any extension, the PHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

## CHAPTER 6- INCOME AND SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the PHA's subsidy. The PHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and PHA policies related to these topics in three parts as follows:

- **Part I: Annual Income.** HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and PHA policies for calculating annual income are found in Part I.
- **Part II: Adjusted Income.** Once annual income has been established HUD regulations require the PHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and PHA policies for calculating adjusted income are found in Part II.
- **Part III: Calculating Family Share and PHA Subsidy.** This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or not, which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph [5.609(c)].
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Inclusions (Exhibit 6-1)
- Annual Income Exclusions (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
  - Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
  - The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

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6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.



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#### TEMPORARILY ABSENT FAMILY MEMBERS

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

##### LHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 30 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 30 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

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#### ABSENT STUDENTS

##### LHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the LHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

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#### ABSENCES DUE TO PLACEMENT IN FOSTER CARE

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

##### PHA Policy

If a child has been placed in foster care, the LHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

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#### ABSENT HEAD, SPOUSE, OR COHEAD

##### LHA Policy

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

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#### FAMILY MEMBERS PERMANENTLY CONFINED FOR MEDICAL REASONS

If a family member is confined to a nursing home or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted [HCV GB, p. 5-22].

##### LHA Policy

The LHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or cohead qualifies as an elderly person or a person with disabilities.

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#### JOINT CUSTODY OF DEPENDENTS

##### LHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 50 percent or more of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the LHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

LHA Policy

The approval of a caretaker is at the owner and PHA's discretion and subject to the owner and PHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the PHA will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the PHA will extend the caretaker's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

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## 6-I.C. ANTICIPATING ANNUAL INCOME

The PHA is required to count all income “anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date” [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

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### BASIS OF ANNUAL INCOME PROJECTION

The PHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes the PHA to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]
- The PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

PHAs are required to use HUD’s Enterprise Income Verification (EIV) system in its entirety as a third party source to verify employment and income information, and to reduce administrative subsidy payment errors in accordance with HUD administrative guidance [24 CFR 5.233(a)(2)].

HUD allows PHAs to use tenant-provided documents (pay stubs) to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where the PHA does not determine it is necessary to obtain additional third-party data.

#### LHA Policy

When EIV is obtained and the family does not dispute the EIV employer data, the PHA will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, the PHA will make every effort to obtain current and consecutive pay stubs dated within the last 60 days.

The PHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If the PHA determines additional information is needed.

In such cases, the PHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the PHA annualized projected income.

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the PHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the PHA to show why the historic pattern does not represent the family's anticipated income.

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#### KNOWN CHANGES IN INCOME

If the PHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the PHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the PHA's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

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#### PROJECTING INCOME - ??????

According to PIH Notice 2017-12, the PHA is required the use of the Enterprise Income Verification (EIV) System to project income.

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## 6-I.D. EARNED INCOME

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### TYPES OF EARNED INCOME INCLUDED IN ANNUAL INCOME

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#### WAGES AND RELATED COMPENSATION

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The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].

##### LHA Policy

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the PHA will use the prior year amounts. In either case the family may provide, and the PHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the PHA will count only the amount estimated by the employer. The file will be documented appropriately.

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#### SOME TYPES OF MILITARY PAY

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All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

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### TYPES OF EARNED INCOME NOT COUNTED IN ANNUAL INCOME

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#### TEMPORARY, NONRECURRING, OR SPORADIC INCOME [24 CFR 5.609(C)(9)]

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This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

##### LHA Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

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#### CHILDREN'S EARNINGS

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Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

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#### CERTAIN EARNED INCOME OF FULL-TIME STUDENTS

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Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

#### INCOME OF A LIVE-IN AIDE

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Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

#### INCOME EARNED UNDER CERTAIN FEDERAL PROGRAMS

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Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

#### RESIDENT SERVICE STIPEND

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Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA’s governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

## STATE AND LOCAL EMPLOYMENT TRAINING PROGRAMS

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Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

### LHA Policy

The PHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The PHA defines *incremental earnings and benefits* as the difference between: (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program, and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the PHA will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the PHA's interim reporting requirements.

## HUD-FUNDED TRAINING PROGRAMS

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Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

### PHA Policy

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

### ***Earned Income Tax Credit***

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee’s payroll check.

### ***Earned Income Disallowance***



The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

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#### 6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16]

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

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##### ELIGIBILITY

This disallowance applies only to individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

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## CALCULATION OF THE DISALLOWANCE

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID. While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the "Original Calculation Method" described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the "Revised Calculation Method" Which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

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## ORIGINAL CALCULATION METHOD

### ***Initial 12-Month Exclusion***

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

#### PHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

### ***Second 12-Month Exclusion and Phase-In***

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

### ***Lifetime Limitation***

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

#### LHA Policy

During the 48-month eligibility period, the PHA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level

at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

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#### REVISED CALCULATION METHOD

##### ***Initial 12-Month Exclusion***

During the initial exclusion period of 12 consecutive months, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded.

##### **LHA Policy**

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

##### ***Second 12-Month Exclusion***

During the second exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

##### **LHA Policy**

During the second 12-month exclusion period, the PHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

##### ***Lifetime Limitation***

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

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#### 6-I.F. BUSINESS INCOME [24 CFR 5.609(B)(2)]

Annual income includes “the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family” [24 CFR 5.609(b)(2)].

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#### BUSINESS EXPENSES

Net income is “gross income less business expense” [HCV GB, p. 5-19].

##### LHA Policy

To determine business expenses that may be deducted from gross income, the PHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

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#### BUSINESS EXPANSION

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion.

##### LHA Policy

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

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#### CAPITAL INDEBTEDNESS

HUD regulations do not permit the PHA to deduct from gross income the amortization of capital indebtedness.

##### LHA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the PHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

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## NEGATIVE BUSINESS INCOME

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

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## WITHDRAWAL OF CASH OR ASSETS FROM A BUSINESS

HUD regulations require the PHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

### LHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of \$2,000 to help a business get started, the PHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid.

Investments do not include the value of labor contributed to the business without compensation.

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## CO-OWNED BUSINESSES

### LHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

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## 6-I.G. ASSETS [24 CFR 5.609(B)(3); 24 CFR 5.603(B)]

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### OVERVIEW

There is no asset limitation for participation in the HCV program. However, HUD requires that the PHA include in annual income the anticipated "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the PHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

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## GENERAL POLICIES

### FAMILY DECLARATION OF ASSETS UNDER \$5,000

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Regulation: 24 CFR §§960.259, 982.516

A PHA must obtain third-party verification of all family assets upon admitting a family to the HCV program and then again at least every 3 years thereafter. During the intervening annual reexaminations, Lakeland Housing Authority will accept a family's declaration that it has total net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration. If a family submits such a declaration, then Lakeland Housing Authority does not need to request supporting documentation (e.g., bank statements) to verify the assets or the amount of income expected to be received from those assets. The family's declaration of total assets must show each asset and the amount of income expected from that asset. The net family assets must be less than or equal to \$5,000 before Lakeland Housing Authority can accept the self-certification. The total amount of the expected income from assets will be the family's "final asset income," and must be entered in field 6j of Form HUD-50058.

All family members 18 years of age and older sign the family's declaration of total assets. For ease of implementation, Lakeland Housing Authority will require families to submit a declaration of assets along with the consent forms that are required pursuant to 24 CFR 5.230. A family that knowingly submits false information is subject to a civil penalty, plus damages, under the False Claims Act (31 U.S.C. 3729).

Whenever a family member is added, Lakeland Housing Authority must obtain third-party verification of that family member's assets. At the next annual reexamination of income following the addition of that family member, Lakeland Housing Authority must obtain third-party verification of all family assets if the addition of that family member's assets puts the family above the \$5,000 asset threshold. If the addition of that family member's assets does not put the family above the \$5,000 asset threshold, then the Lakeland Housing Authority is not required to obtain third-party verification of all family assets at the next annual reexamination of income following the addition of the family member; however, third-party verification of all family assets is required at least every 3 years.

Assets of \$5,000 or less have little to no effect on family rental payments. This provision is intended to alleviate the burden on Lakeland Housing Authority and families of verifying such assets; it also brings the HCV, PBV, and public housing programs in line with Internal Revenue Service guidance for the federal Low Income Housing Tax Credit program. For the LIHTC program, housing credit agencies and owners are permitted to accept a certification from families that their assets do not exceed \$5,000.

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## INCOME FROM ASSETS

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes the PHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) the PHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is

currently vacant, the PHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### LHA Policy

Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the PHA to show why the asset income determination does not represent the family's anticipated asset income.

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#### VALUING ASSETS

The calculation of asset income sometimes requires the PHA to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

#### LHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

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#### LUMP-SUM RECEIPTS

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

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#### IMPUTING INCOME FROM ASSETS [24 CFR 5.609(B)(3), NOTICE PIH 2012-29]

When net family assets are \$5,000 or less, the PHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the PHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by an average passbook savings rate as determined by the PHA.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the PHA to establish a passbook rate within 0.75 percent of a national average.
- The PHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

- LHA Policy

The LHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The LHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

Changes to the passbook rate will take effect on February 1 following the December review.

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#### DETERMINING ACTUAL ANTICIPATED INCOME FROM ASSETS

It may or may not be necessary for the PHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

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#### WITHDRAWAL OF CASH OR LIQUIDATION OF INVESTMENTS

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement investment plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement investment plan.

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#### JOINTLY OWNED ASSETS

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes “amounts derived (during the 12-month period) from assets to which any member of the family has access.”

LHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the PHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the PHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the PHA will prorate the asset evenly among all owners.



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## ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(B)]

HUD regulations require the PHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

### MINIMUM THRESHOLD

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The *HVC Guidebook* permits the PHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

#### LHA Policy

The PHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in nonrevocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

### SEPARATION OR DIVORCE

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The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

#### LHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

### FORECLOSURE OR BANKRUPTCY

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Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

### FAMILY DECLARATION

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#### LHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value.

The PHA may verify the value of the assets disposed of if other information available to the PHA does not appear to agree with the information reported by the family.

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## TYPES OF ASSETS

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### CHECKING AND SAVINGS ACCOUNTS

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For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

#### LHA Policy

In determining the value of a checking account, the LHA will use the current month balance.

In determining the value of a savings account, the LHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the LHA will multiply the value of the account by the current rate of interest paid on the account.

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### INVESTMENT ACCOUNTS SUCH AS STOCKS, BONDS, SAVING CERTIFICATES, AND MONEY MARKET FUNDS

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Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### LHA Policy

In determining the market value of an investment account, the LHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the PHA will calculate asset income based on the earnings for the most recent reporting period.

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## EQUITY IN REAL PROPERTY OR OTHER CAPITAL INVESTMENTS

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

### LHA Policy

In determining the equity, the PHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

The PHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the PHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income **except** for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

The PHA must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

### LHA Policy

For the purposes of calculating expenses to convert to cash for real property, the PHA will use ten percent of the market value of the home.

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

#### LHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the PHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

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### TRUSTS

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

#### REVOCABLE TRUSTS

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If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

#### NONREVOCABLE TRUSTS

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In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

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### RETIREMENT ACCOUNTS

#### COMPANY RETIREMENT/PENSION ACCOUNTS

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In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the PHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

#### *IRA, Keogh, and Similar Retirement Savings Accounts*

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

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#### PERSONAL PROPERTY

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

##### LHA Policy

In determining the value of personal property held as an investment, the LHA will use the family's estimate of the value. The LHA may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

##### LHA Policy

Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

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#### LIFE INSURANCE

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

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## 6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

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### PERIODIC PAYMENTS INCLUDED IN ANNUAL INCOME

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14].

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### LUMP-SUM PAYMENTS FOR THE DELAYED START OF A PERIODIC PAYMENT

Most lump-sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [24 CFR 5.609(c)(14)].

#### LHA Policy

When a delayed-start payment is received and reported during the period in which the LHA is processing an annual reexamination, the LHA will adjust the family share and LHA subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the LHA.

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### TREATMENT OF OVERPAYMENT DEDUCTIONS FROM SOCIAL SECURITY BENEFITS

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

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## PERIODIC PAYMENTS EXCLUDED FROM ANNUAL INCOME

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

### PHA Policy

The PHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)].
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)].
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)].
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump-sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.H.) [24 CFR 5.609(c)(14)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].



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#### 6-I.I. PAYMENTS IN LIEU OF EARNINGS

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

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#### 6-I.J. WELFARE ASSISTANCE

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##### OVERVIEW

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

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##### SANCTIONS RESULTING IN THE REDUCTION OF WELFARE BENEFITS [24 CFR 5.615]

The PHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

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##### COVERED FAMILIES

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

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##### IMPUTED INCOME

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

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## OFFSETS

The amount of the imputed welfare income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

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## 6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(B)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

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## ALIMONY AND CHILD SUPPORT

The PHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

### LHA Policy

The LHA will count court-awarded amounts for alimony and child support unless the LHA verifies that: (1) the payments are not being made, and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

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## REGULAR CONTRIBUTIONS OR GIFTS

The PHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

### LHA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by the LHA. For contributions that may vary from month to month (e.g., utility payments), the LHA will include an average amount based upon past history.

In 2005, Congress passed a law (for Section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

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STUDENT FINANCIAL ASSISTANCE INCLUDED IN ANNUAL INCOME [24 CFR 5.609(B)(9); FR 4/10/06; NOTICE PIH 2015-21]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition and any other required fees and charges received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the PHA will use the definitions of *dependent child*, *institution of higher education*, and *parents* in section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
  - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
  - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
  - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.

- Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).
- Expenses related to attending an institution of higher education must **not** be included as tuition. Examples include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed-sum charges.

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#### STUDENT FINANCIAL ASSISTANCE EXCLUDED FROM ANNUAL INCOME [24 CFR 5.609(C)(6)]

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

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#### 6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17), FR Notice 5/20/14]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
  - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
  - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
  - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
  - (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
  - (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
  - (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See Section 6-I.L. for exceptions.)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013–30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations

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6-II.A. INTRODUCTION

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OVERVIEW

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (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:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a 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; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7.

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ANTICIPATING EXPENSES

LHA Policy

Generally, the LHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), the PHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the PHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The PHA may require the family to provide documentation of payments made in the preceding year.

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#### 6-II.B. DEPENDENT DEDUCTION

An allowance of \$480 is deducted from annual income for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

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#### 6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

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#### 6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(A)(3)(I)]

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

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#### DEFINITION OF MEDICAL EXPENSES

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

##### LHA Policy

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used as a reference to determine the costs that qualify as medical expenses.

<b>Summary of Allowable Medical Expenses from IRS Publication 502</b>	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, noncosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	



Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
<b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

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FAMILIES THAT QUALIFY FOR BOTH MEDICAL AND DISABILITY ASSISTANCE EXPENSES

LHA Policy

This policy applies only to families in which the head, spouse, or cohead is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(B) AND 24 CFR 5.611(A)(3)(II)]

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

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EARNED INCOME LIMIT ON THE DISABILITY ASSISTANCE EXPENSE DEDUCTION

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

LHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the PHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the PHA determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members' incomes.

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#### ELIGIBLE DISABILITY EXPENSES

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

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#### ELIGIBLE AUXILIARY APPARATUS

##### LHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

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#### ELIGIBLE ATTENDANT CARE

The family determines the type of attendant care that is appropriate for the person with disabilities.

##### LHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the PHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

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#### PAYMENTS TO FAMILY MEMBERS

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

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#### NECESSARY AND REASONABLE EXPENSES

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

##### LHA Policy

The PHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the PHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the PHA will consider, the family's justification for costs that exceed typical costs in the area.

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#### FAMILIES THAT QUALIFY FOR BOTH MEDICAL AND DISABILITY ASSISTANCE EXPENSES

##### LHA Policy

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the PHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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#### 6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

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#### CLARIFYING THE MEANING OF CHILD FOR THIS DEDUCTION

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family's household are included when determining the family's child care expenses [HCV GB, p. 5-29].

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#### QUALIFYING FOR THE DEDUCTION

## DETERMINING WHO IS ENABLED TO PURSUE AN ELIGIBLE ACTIVITY

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### LHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, the PHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

## SEEKING WORK

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### LHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the PHA.

## FURTHERING EDUCATION

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### LHA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

## BEING GAINFULLY EMPLOYED

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### LHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

## EARNED INCOME LIMIT ON CHILD CARE EXPENSE DEDUCTION

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When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The PHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

### LHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the PHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

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## ELIGIBLE CHILD CARE EXPENSES

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

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## ALLOWABLE CHILD CARE ACTIVITIES

### LHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family’s unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the

LHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

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#### NECESSARY AND REASONABLE COSTS

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

##### LHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the LHA will use the schedule of child care costs from the local welfare agency. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

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6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

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TTP FORMULA [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family’s monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family’s monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by the PHA

The PHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family’s TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

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WELFARE RENT [24 CFR 5.628]

LHA Policy

Welfare rent does not apply in this locality.

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MINIMUM RENT [24 CFR 5.630]

LHA Policy

The minimum rent for this locality is \$ 50.00.

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FAMILY SHARE [24 CFR 982.305(A)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the PHA’s applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the PHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family’s monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family’s voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

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PHA SUBSIDY [24 CFR 982.505(B)]

The PHA will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

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UTILITY REIMBURSEMENT [24 CFR 982.514(B); 982.514(C)]

When the PHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits the PHA to pay the reimbursement to the family or directly to the utility provider.

LHA Policy

The LHA will make utility reimbursements to the family.

The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship.

LHA Policy

The LHA will issue all utility reimbursements monthly.

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SECTION 8 PRESERVATION VOUCHERS

1. Payment Standard

- a. The payment standard is the lower of:
  - i. The payment standard amount for the appropriate family unit size; or
  - ii. The payment standard amount for the size of the dwelling unit actually rented by the family.
- b. If the dwelling unit is located in an exception area, the Lakeland Housing Authority will use the appropriate payment standard for the exception area.
- c. During the HAP contract term, the payment standard for the family is the higher of :
  - i. The initial payment standard (at the beginning of the HAP contract term), as determined in accordance with paragraph (1)(a) or (1)(b) of this section, minus any amount by which the initial rent to the owner exceeds the current rent to the owner; or
  - ii. The payment standard as determined in accordance with paragraph (1)(a) or (1)(b) of this section, as determined at the most recent regular reexamination of



family income and composition effective after the beginning of the HAP contract term.

d. At the next regular reexamination following a change in family composition that causes a change in family unit size during the HAP contract term, and for any examination thereafter during the term:

i. Paragraph I(i) of this section does not apply; and

ii. The new family unit size must be used to determine the payment standard.

2. The Lakeland Housing Authority will pay a monthly housing assistance payment on behalf of the family that equals the lesser of:

a. The payment standard minus the total tenant payment; or

b. The gross rent minus the total tenant payment.

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#### MANUFACTURED HOME SPACE RENTAL: SECTION 8 VOUCHERS

1. The payment standard for a participant renting a manufactured home space is the published FMR for rental of a manufactured home space.

2. The space rent is the sum of the following as determined by the Housing Authority:

a. Rent to the owner for the manufactured home space;

b. Owner maintenance and management charges for the space; and

c. Utility allowance for participant paid utilities.

3. The participant pays the rent to owner less the HAP.

4. HAP equals the lesser of:

a. The payment standard minus the total tenant payment; or

b. The rent paid for rental of the real property on which the manufactured home owned by the family is located.

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#### RENT FOR FAMILIES UNDER THE NONCITIZEN RULE

A mixed family will receive full continuation of assistance if all of the following conditions are met:

1. The family was receiving assistance on June 19, 1995;

2. The family was granted continuation of assistance before November 29, 1996;

3. The family's head or spouse has eligible immigration status; and

4. The family does not include any person who does not have eligible status other than the head of household, the spouse of the head of household, any parent of the head or spouse, or any child (under the age of 18) of the head or spouse.

The family's assistance is prorated in the following manner:

1. Find the prorated housing assistance payment (HAP) by dividing the HAP by the total number of family members, and then multiplying the result by the number of eligible family members.
2. Obtain the prorated family share by subtracting the prorated HAP from the gross rent (contract rent plus utility allowance).
3. The prorated resident rent equals the prorated family share minus the full utility allowance.

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#### 6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

##### LHA Policy

The financial hardship rules described below do not apply in this jurisdiction because the PHA has established a minimum rent of \$0.

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#### OVERVIEW

If the PHA establishes a minimum rent greater than zero, the PHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the PHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

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#### HUD-DEFINED FINANCIAL HARDSHIP

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

##### LHA Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following: (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

- (2) The family would be evicted because it is unable to pay the minimum rent.

##### LHA Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

LHA Policy

In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member’s income).

- (5) The family has experienced other circumstances determined by the PHA.

LHA Policy

The PHA has not established any additional hardship criteria.

IMPLEMENTATION OF HARDSHIP EXEMPTION

DETERMINATION OF HARDSHIP

When a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the first of the month following the family’s request.

The PHA then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

LHA Policy

The LHA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

<b>Example: Impact of Minimum Rent Exemption</b>	
Assume the PHA has established a minimum rent of \$35.	
<b>Family Share – No Hardship</b>	<b>Family Share – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$35 Minimum rent	\$35 Minimum rent
Minimum rent applies. TTP = \$35	Hardship exemption granted. TTP = \$15

### LHA Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The LHA will make the determination of hardship within 30 calendar days.

### NO FINANCIAL HARDSHIP

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If the PHA determines there is no financial hardship, the PHA will reinstate the minimum rent and require the family to repay the amounts suspended.

### PHA Policy

The PHA will require the family to repay the suspended amount within 30 calendar days of the PHA's notice that a hardship exemption has not been granted.

### TEMPORARY HARDSHIP

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If the PHA determines that a qualifying financial hardship is temporary, the PHA must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the PHA the amounts suspended. HUD requires the PHA to offer a reasonable repayment agreement, on terms and conditions established by the PHA. The PHA also may determine that circumstances have changed and the hardship is now a long-term hardship.

### LHA Policy

The LHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### LONG-TERM HARDSHIP

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If the PHA determines that the financial hardship is long-term, the PHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

### LHA Policy

The hardship period ends when any of the following circumstances apply:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until

the family receives at least \$60/month in income from another source or once again begins to receive the child support.

- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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## 6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(B)]

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### OVERVIEW

The PHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the PHA's payment standards. The establishment and revision of the PHA's payment standard schedule are covered in Chapter 16.

*Payment standard* is defined as “the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)” [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the PHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the PHA has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the PHA must use the appropriate payment standard for the exception area.

The PHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the PHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

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### CHANGES IN PAYMENT STANDARDS

When the PHA revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

### DECREASES

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If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. The PHA will determine the payment standard for the family as follows:

**Step 1:** At the first regular reexamination following the decrease in the payment standard, the PHA will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

**Step 2:** The PHA will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the PHA at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The PHA will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

**Step 3:** At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

#### INCREASES

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If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

#### CHANGES IN FAMILY UNIT SIZE

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Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

#### REASONABLE ACCOMMODATION

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If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the PHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR.

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#### 6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]

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##### OVERVIEW

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the PHA's subsidy standards.

For policies on establishing and updating utility allowances, see Chapter 16.

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##### REASONABLE ACCOMMODATION

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the PHA with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

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##### UTILITY ALLOWANCE REVISIONS

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

##### LHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

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#### 6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

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HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The PHA must prorate the assistance provided to a mixed family. The PHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

**24 CFR 5.609**

*(a) Annual income means all amounts, monetary or not, which:*

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

*(b) Annual income includes, but is not limited to:*

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);



(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

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<sup>1</sup> Text of 45 CFR 260.31 follows.

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

<p style="text-align: center;"><b>HHS DEFINITION OF "ASSISTANCE"</b></p>
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**45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance" mean?**

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

**24 CFR 5.609**

*(c) Annual income does not include the following:*

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6-I.M. for a list of benefits that qualify for this exclusion.]

**24 CFR 5.603(b) Net Family Assets**

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

**24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

*(a) Applicable programs.* The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24

CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

*(b) Definitions.* The following definitions apply for purposes of this section.

*Baseline income.* The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of 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

(3) Whose annual income increases, as a result of 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 funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not 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.

*(c) Disallowance of increase in annual income—*

*(1) Initial twelve month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

*(2) Second twelve month exclusion and phase-in.* Upon expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

*(3) Maximum 2-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

*(4) Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to *May 9, 2016* will continue to be governed by this section in

effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016).

*(d) Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## 24 CFR 5.615

### **Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

*(b) Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of



such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

*(e) PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.



## CHAPTER 7-VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 201712]

### INTRODUCTION

The PHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The PHA must not pass on the cost of verification to the family.

The PHA will follow the verification guidance provided by HUD in Notice PIH 2017-12 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the PHA.

### PART I: GENERAL VERIFICATION REQUIREMENTS

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#### 7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230]

The family must supply any information that the PHA or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551].

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#### CONSENT FORMS

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the PHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

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#### PENALTIES FOR FAILING TO CONSENT [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the PHA will deny admission to applicants and terminate assistance of participants. The family may request an

informal review (applicants) or informal hearing (participants) in accordance with PHA procedures.7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

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#### HUD'S VERIFICATION HIERARCHY [NOTICE PIH 2017-12]

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the PHA to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

In order of priority, the forms of verification that the PHA will use are:

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system
- Written Third-Party Verification (may be provided by applicant or participant)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

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#### REQUIREMENTS FOR ACCEPTABLE DOCUMENTS

##### LHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to the PHA. The documents must not be damaged, altered or in any way illegible.

Print-outs from Web pages are considered original documents.

The PHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed in the presence of a PHA representative or PHA notary public.

The PHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

LHA Policy

The LHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When the PHA is unable to obtain third-party verification, the PHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2017-12].

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7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the PHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the PHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the PHA.

See Chapter 6 for the PHA's policy on the use of UIV/EIV to project annual income.

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## UPFRONT INCOME VERIFICATION USING HUD'S ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM (MANDATORY)

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. The following policies apply to the use of HUD's EIV system.

### EIV INCOME REPORTS

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The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

#### LHA Policy

The PHA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in participant files with the applicable annual or interim reexamination documents.

When the PHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

The EIV Income Report must remain in the tenant file for the duration of tenancy and no longer than three years from the end of participation (EOP) date. The Lakeland Housing Authority is required to maintain at a minimum, the last three years of the form HUD50058, and supporting documentation for all annual and interim reexaminations of family income. All records are to be maintained for a period of at least three years from the effective date of the action. Once the data has served its purpose, it shall be destroyed by either burning or shredding the data.

## EIV IDENTITY VERIFICATION

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The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

### LHA Policy

The PHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The PHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When the PHA determines that discrepancies exist due to PHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

## UPFRONT INCOME VERIFICATION USING NON-HUD SYSTEMS (OPTIONAL)

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In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

### LHA Policy

The PHA will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

**Note:** LHA may use additional UIV resources as they become available.

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#### 7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the PHA by the family. If written third-party verification is not available, the PHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

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##### WRITTEN THIRD-PARTY VERIFICATION [NOTICE PIH 2017-12]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The PHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

##### LHA Policy

Third-party documents provided by the family must be dated within 60 days of the PHA request date.

Note: Documents older than 60 calendar days (from the Lakeland Housing Authority interview/determination or request date) is acceptable for confirming effective dates of income.

Third-party written verifications may also be used to supplement Up-front Income Verifications. They will be utilized when there is a discrepancy of \$200 a month or more and the participant disputes the UIV results.

Note: Social Security benefit information in EIV is updated every three months. If the tenant agrees with the EIV-reported benefit information, PHAs do not need to obtain or request a benefit verification letter from the tenant.

If the PHA determines that third-party documents provided by the family are not acceptable, the PHA will explain the reason to the family and request additional documentation.

As verification of earned income, the PHA will require the family to provide the two most current, consecutive pay stubs.



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## WRITTEN THIRD-PARTY VERIFICATION FORM

When upfront verification is not available and the family is unable to provide written third-party documents, the PHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

### LHA Policy

The PHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the PHA.

LHA will allow 14 calendar days for the return of third party written verifications prior to continuing on to the next type of verification.

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## ORAL THIRD-PARTY VERIFICATION [NOTICE PIH 2017-12]

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 5 business days.

PHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

### LHA Policy

In collecting third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the PHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

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## DISCREPANCIES IN VERIFIED INFORMATION

An EIV Income Report shall be pulled from the system before annual or interim reexamination are conducted for any family and compared with family-reported information. If the EIV report reveals an income source that was not reported by the participant or a substantial difference (defined as \$2400 or more annually) in the reported income information, the Lakeland Housing Authority will:

- A. Discuss the income discrepancy with the participant; and
- B. Request the participant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources; and
- C. In the event the participant is unable to provide acceptable documentation to resolve the income discrepancy, the Lakeland Housing Authority will request from the third party source, any information necessary to resolve the income discrepancy; and
- D. If applicable, determine the participant's underpayment of rent as a result of unreported or underreported income, retroactively\*; and
- E. Take any other appropriate action.

\*The Lakeland Housing Authority will determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determinations.

The participant will be provided an opportunity to contest the Lakeland Housing Authority's determination of overpayment of the HAP. Participants will be promptly notified in writing of any adverse findings made on the basis of the information verified through the aforementioned income discrepancy resolution process. The participant may contest the findings in accordance with established grievance procedures. The Lakeland Housing Authority will not terminate, deny, suspend, or reduce the family's assistance until the expiration of any notice or grievance period.

When there is an unsubstantial or no disparity between participant-reported and EIV-reported income information, the Lakeland Housing Authority will obtain from the participant, any necessary documentation to complete the income determination process. As noted previously, the Lakeland Housing Authority may reject any participant-provided documentation, if the Authority deems the documentation unacceptable. Documentation provided by the participant will only be rejected for only the following reasons:

- A. The document is not an original; or
- B. The original document has been altered, mutilated, or is not legible; or
- C. The document appears to be a forged document (i.e. does not appear to be authentic).

The Lakeland Housing Authority will explain to the participant, the reason(s) the submitted documents are not acceptable and request the participant to provide additional documentation. If at any time, the participant is unable to provide acceptable documentation that the Lakeland Housing Authority deems necessary to complete the income determination process, the Authority will submit a traditional third-party verification form to the third-party source for completion and submission to the Lakeland Housing Authority.

If the third-party source does not respond to the Lakeland Housing Authority's request for information, the Authority is required to document the participant file of its attempt to obtain third-party verification and that no response to the third party verification request was received.

The Lakeland Housing Authority will then pursue lower level verifications in accordance with the verification hierarchy.

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#### WHEN THIRD-PARTY VERIFICATION IS NOT REQUIRED [NOTICE PIH 2017-12]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

##### LHA Policy

If the family cannot provide original documents, the PHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

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#### PRIMARY DOCUMENTS

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

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#### IMPUTED ASSETS

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

##### LHA Policy

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

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#### VALUE OF ASSETS AND ASSET INCOME [24 CFR 982.516(A)]

For families with net assets totaling \$5,000 or less, the PHA may accept the family's declaration of asset value and anticipated asset income. However, the PHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

##### LHA Policy

For families with net assets totaling \$5,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.

The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

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### 7-I.E. SELF-CERTIFICATION

When HUD requires third-party verification, self-certification or “tenant declaration,” is used as a last resort when the PHA is unable to obtain third-party verification.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$5,000 or less and the PHA has adopted a policy to accept self-certification at annual recertification, when applicable
- The PHA has adopted a policy to implement streamlined annual recertification for fixed sources of income (See Chapter 11)

When the PHA was required to obtain third-party verification but instead relies on a tenant declaration for verification of income, assets, or expenses, the family’s file must be documented to explain why third-party verification was not available.

#### LHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the PHA.

The PHA may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a PHA representative or Notary Public.

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## PART II: VERIFYING FAMILY INFORMATION

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### 7-II.A. VERIFICATION OF LEGAL IDENTITY

#### LHA Policy

The PHA will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
	Health and Human Services ID

U.S. military discharge (DD 214)	Certified school records
Current U.S. passport	
Current employer identification card	

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the PHA’s discretion, a third party who knows the person may attest to the person’s identity. The certification must be provided in a format acceptable to the PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PHA has reason to doubt the identity of a person representing him or herself to be a participant.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, NOTICE PIH 2012-10]

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The PHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

The PHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

LHA Policy

The LHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The PHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

#### LHA Policy

The LHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the PHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

#### LHA Policy

The LHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The PHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

#### LHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

#### LHA Policy

The LHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers

Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

Once the individual's verification status is classified as "verified," the PHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

LHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, the PHA will remove and destroy copies of documentation accepted as evidence of social security numbers.

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7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

PHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the PHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

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7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

LHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

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MARRIAGE

LHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a marital relationship, the PHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).



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## SEPARATION OR DIVORCE

### LHA Policy

Certification by the head of household is normally sufficient verification. If the PHA has reasonable doubts about a separation or divorce, the PHA will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

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## ABSENCE OF ADULT MEMBER

### LHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

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## FOSTER CHILDREN AND FOSTER ADULTS

### LHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

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## 7-II.E. VERIFICATION OF STUDENT STATUS

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### GENERAL REQUIREMENTS

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#### LHA Policy

The PHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family reports full-time student status for an adult other than the head, spouse, or cohead.

The family reports child care expenses to enable a family member to further his or her education.

The family includes a student enrolled in an *institution of higher education*.

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### RESTRICTIONS ON ASSISTANCE TO STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

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This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

#### LHA Policy

In accordance with the verification hierarchy described in section 7-1.B, the PHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see section Exhibit 3-2).

The student is at least 24 years old.

The student is a veteran, as defined in section 3-II.E.

The student is married.

The student has at least one dependent child, as defined in section 3-II.E.

The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the PHA cannot verify at least one of these exemption criteria, the PHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the PHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from his/her parents (see below).

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## INDEPENDENT STUDENT

### LHA Policy

The PHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)

Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

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## 7-II.F. DOCUMENTATION OF DISABILITY

The PHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The PHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA will not place this information in the tenant file. Under no circumstances will the PHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability

Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

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#### FAMILY MEMBERS RECEIVING SSA DISABILITY BENEFITS

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

##### LHA Policy

For family members claiming disability who receive disability benefits from the SSA, the PHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the PHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the PHA.

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#### FAMILY MEMBERS NOT RECEIVING SSA DISABILITY BENEFITS

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

##### LHA Policy

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## OVERVIEW

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

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## U.S. CITIZENS AND NATIONALS

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The PHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

### LHA Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the PHA receives information indicating that an individual's declaration may not be accurate.

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## ELIGIBLE IMMIGRANTS

### DOCUMENTS REQUIRED

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All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

### PHA VERIFICATION [HCV GB, PP. 5-3 AND 5-7]

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For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the PHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The PHA will follow all USCIS protocols for verification of eligible immigration status.

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### 7-II.H. VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

#### LHA Policy

The PHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The PHA will verify this preference using the PHA's termination records.

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## PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

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### 7-III.A. EARNED INCOME

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#### TIPS

##### LHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

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#### WAGES

##### LHA Policy

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

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### 7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

##### LHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The PHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the PHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the PHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

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#### 7-III.C. Periodic Payments And Payments In Lieu Of Earnings

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

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#### SOCIAL SECURITY/SSI BENEFITS

##### LHA Policy

To verify the SS/SSI benefits of applicants, the PHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the PHA will help the applicant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to the PHA.

To verify the SS/SSI benefits of participants, the PHA will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the PHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the PHA will help the participant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to the PHA.



LHA Policy

The methods the PHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 60 days prior to PHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

**Note:** Families are not required to undertake independent enforcement action.

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### 7-III.E. ASSETS AND INCOME FROM ASSETS

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#### ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### LHA Policy

The PHA will verify the value of assets disposed of only if:

The PHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the PHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The PHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the PHA will verify the value of this asset.

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### 7-III.F. NET INCOME FROM RENTAL PROPERTY

#### LHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the PHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

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#### 7-III.G. RETIREMENT ACCOUNTS

##### LHA Policy

The PHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, the PHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

*Upon* retirement, the PHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

*After* retirement, the PHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

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#### 7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the PHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, PHAs have the option of requiring additional verification.

For partially excluded income, the PHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).

### LHA Policy

The PHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source.

The PHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

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#### 7-III.1. ZERO ANNUAL INCOME STATUS

### LHA Policy

The PHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

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#### 7-III.J. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the PHA would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

##### LHA Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the PHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, the PHA will request written verification of the student's tuition amount.

If the PHA is unable to obtain third-party written verification of the requested information, the PHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

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#### 7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

##### LHA Policy

If the PHA is required to determine the income eligibility of a student's parents, the PHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The PHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the PHA. The required information must be submitted (postmarked) within 10 business days of the date of the PHA's request or within any extended timeframe approved by the PHA.

The PHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

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## PART IV: VERIFYING MANDATORY DEDUCTIONS

### 7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the PHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### DEPENDENT DEDUCTION

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The PHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### ELDERLY/DISABLED FAMILY DEDUCTION

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The PHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

### 7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### AMOUNT OF EXPENSE

##### LHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

The PHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The PHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

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#### ELIGIBLE HOUSEHOLD

The medical expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The PHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

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#### QUALIFIED EXPENSES

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the PHA's policy on what counts as a medical expense.

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#### UNREIMBURSED EXPENSES

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

##### LHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

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#### EXPENSES INCURRED IN PAST YEARS

##### LHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the PHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years



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#### 7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

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#### AMOUNT OF EXPENSE

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##### ATTENDANT CARE

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###### LHA Policy

The PHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the PHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

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#### AUXILIARY APPARATUS

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###### LHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the PHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

#### FAMILY MEMBER IS A PERSON WITH DISABILITIES

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To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

#### FAMILY MEMBER(S) PERMITTED TO WORK

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The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

##### LHA Policy

The PHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

#### UNREIMBURSED EXPENSES

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To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

##### LHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

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#### 7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the PHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

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#### ELIGIBLE CHILD

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The PHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

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#### UNREIMBURSED EXPENSE

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

##### LHA Policy

The family (and the care provider) will be required to certify that the child care expenses are not paid or reimbursed to the family from any source.

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#### PURSUING AN ELIGIBLE ACTIVITY

The PHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

##### LHA Policy

###### *Information to be Gathered*

The PHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

###### *Seeking Work*

Whenever possible the PHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the PHA will request family-provided verification from the agency of the member's job

seeking efforts to date, and require the family to submit to the PHA any reports provided to the other agency.

In the event third-party verification is not available, the PHA will provide the family with a form on which the family member must record job search efforts. The PHA will review this information at each subsequent reexamination for which this deduction is claimed.

#### *Furthering Education*

The PHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

#### *Gainful Employment*

The PHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

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### ALLOWABLE TYPE OF CHILD CARE

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### LHA Policy

The PHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The PHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The PHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

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### REASONABLENESS OF EXPENSES

Only reasonable child care costs can be deducted.

#### LHA Policy

The actual costs the family incurs will be compared with the PHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the PHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS [HCV GB, PP. 5-9 AND 5-10]

<ul style="list-style-type: none"> <li>• <b>All</b> noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b></p> <ul style="list-style-type: none"> <li>• A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</li> </ul>	
<p><b>All other Noncitizens</b></p> <ul style="list-style-type: none"> <li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</li> </ul>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

## CHAPTER 8- HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS. Effective July 1, 2014, PHAs may establish a policy for performing unit inspections biennially rather than annually. This policy could apply to some or all assisted units. PHAs still have the option to inspect every unit annually. See Section 8-II.G for further details.

HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and PHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the PHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

### PART I: PHYSICAL STANDARDS

#### 8-I.A. GENERAL HUD REQUIREMENTS

##### HUD PERFORMANCE AND ACCEPTABILITY STANDARDS

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

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#### TENANT PREFERENCE ITEMS

HUD requires the PHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.



## **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

### PHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

## **8-I.B. ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

### **Thermal Environment [HCV GB p.10-7]**

The PHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

#### PHA Policy

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

## **Clarifications of HUD Requirements**

### PHA Policy

As permitted by HUD, the PHA has adopted the following specific requirements that elaborate on HUD standards.

#### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

#### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

#### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

#### ***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

#### ***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All sinks must have functioning stoppers.

#### ***Toilets***

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

### *Security*

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

### **8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a)]**

HUD requires the PHA to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life-threatening conditions within 24 hours of PHA notification.

#### PHA Policy

The following are considered life-threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the PHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

## **8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

### **Family Responsibilities**

The family is responsible for a breach of the HQS that is caused by any of the following:

- a. The family fails to pay for any utilities that the owner is not required to pay for, but which are to be paid by the resident;
- b. The family fails to provide and maintain any appliances that the owner is not required to provide, but which are to be provided by the participant; or
- c. Any member of the household or a guest damages the dwelling unit or premises (damage beyond ordinary wear and tear). "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.
- d. If an HQS breach caused by the family is life threatening, the family must correct the defect within no more than 24 hours. For other family-caused defects, the family must correct the defect within no more than 30 calendar days (or any Lakeland Housing Authority approved extension).
- e. If the family has caused a breach of the HQS, the Lakeland Housing Authority will take prompt and vigorous action to enforce the family obligations. The Lakeland Housing Authority may terminate assistance for the family in accordance with 24 CFR 982.552.

### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

1. The owner must maintain the unit in accordance with HQS.
2. If the owner fails to maintain the dwelling unit in accordance with HQS, the Lakeland Housing Authority will take prompt and vigorous action to enforce the owner obligations. The Lakeland Housing Authority's remedies for such breach of the HQS include termination, suspension or reduction of housing assistance payments and termination of the HAP contract.
3. The Lakeland Housing Authority will not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by the Lakeland Housing Authority and the Lakeland Housing Authority verifies the correction. If a defect is life threatening, the owner must correct the defect within no more than 24 hours. For other defects the owner must correct the defect within no more than 30 calendar days (or any Lakeland Housing Authority approved extension). If the required repair is not made in a timely manner, the rent shall be abated beginning with the next rent check. If two consecutive checks are abated, the assistance shall be cancelled.
4. The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible. Furthermore, the Lakeland Housing Authority may terminate assistance to a family because of the HQS breach caused by the family.

### **8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH2017-13]**

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the PHA must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

### **8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 24 CFR 982.403]**

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

## **PART II: THE INSPECTION PROCESS**

### **8-II.A. OVERVIEW [24 CFR 982.405]**

#### **Types of Inspections**

There are six types of inspections the Lakeland Housing Authority will perform:

A. Initial Inspection – An inspection that must take place to insure that the unit passes HQS before assistance can begin.

B. Biennial Inspection – To streamline and reduce administrative expenses, in lieu of annual inspections and at the discretion of the HACNC, biennial inspections must be conducted within twenty four (24) months of the last inspection.

C. Complaint/Special Inspection – At request of owner, family, an agency , or another third party.

D. Emergency – An inspection that takes place in the event of a perceived emergency. These will take precedence over all other inspections.

F. Move out Inspection (if applicable) – An inspection required for units in service before October 2, 1995, and optional after that date. These inspections document the condition of the unit at the time of the move-out.

G. Quality Control Inspection – Supervisory inspections based on the following HUD requirements per number of vouchers the PHA has under contract:

- 50 or less                    5 files
- 51-600                        5 files + 1 files for each 50 (or part of 50) over 50
- 601-2000                    16 files + 1 file for each 100 (or part) over 600
- Over 2000                    30 files + 1 file for each 200(or part) over 2000

#### **Inspection of PHA-Owned Units [24 CFR 982.352(b)]**

The PHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

## **Inspection Costs [Notice PIH 2016-05]**

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

### LHA Policy

For non-life threatening fail items, the LHA will re-inspect the unit to ensure that the item was corrected. The LHA may accept written certification from the owner and the participant in lieu of performing a re-inspection as proof that the required repairs have been made. LHA reserves the right to conduct an inspection.

For owner fail items, the owner must notify the LHA when repairs are completed. If such repairs have not been made or if the re-inspection cannot be completed prior to the deadline the LHA will abate the HAP effective the first of the month following the expiration of the correction period.

Where inspection deficiencies are the owner's responsibility the LHA will charge the owner a non-refundable \$50 fee for conducting a second re-inspection.

For participant fail items the LHA will send an Intent to Terminate (ITT) notice to the family after the second fail.

## **Notice and Scheduling**

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

### PHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally inspections will be conducted on business days only. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

## **Owner and Family Inspection Attendance**



HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

PHA Policy

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

## **8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]**

### **Timing of Initial Inspections**

The Lakeland Housing Authority will schedule a timely inspection of the unit on the date the owner indicates that the unit will be ready for inspection, or as soon as possible thereafter (within 15 calendar days) upon receipt of a Request for Tenancy Approval. The owner and participant will be notified in writing of the results of the inspection. If the unit fails HQS, the owner and the participant will be advised to notify the Lakeland Housing Authority when the repairs have been properly completed. The Lakeland Housing Authority may, at its sole discretion and depending upon the severity of the HQS deficiency, may either order a re-inspection or direct alternative means to verify that the deficiency has been corrected.

1. Alternative means of verification allowed are:
  - a. The owner may certify that the corrections have been made.
  - b. The owner may be required to present a receipt for the work required
  - c. A photograph of the corrected item may be presented by the owner
2. If alternative methods of verification are used, The Lakeland Housing Authority will confirm the remedy of the deficiency with the Participant.
3. If alternative methods of verification are used, the remedy of the deficiency will be confirmed at the next inspection.
4. A re-inspection will be ordered if any items of deficiency would constitute a danger to the family's health or safety as defined in this chapter.

On an initial inspection, the owner will be given up to 14 calendar days to correct the items noted as failed, depending on the extent of the repairs that are required to be made. No unit will be placed in the program until the unit meets the HQS requirements.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval after the owner has made repairs, if they are unable to locate another suitable unit.

### **HQS Fail Items for Units under Contract**

The owner or participant will be given time to correct the failed items cited on the inspection report for a unit already under contract. If the failed items endanger the family's health or safety (using the emergency item in Section 12.6), the owner or participant will be given 24 hours to correct the violations. For less serious failures, the owner or participant will be given up to 30 calendar days to correct the failed item(s). The Lakeland Housing Authority may, at its sole discretion and depending upon the severity of the HQS deficiency, may either order a re-inspection or direct alternative means to verify that the deficiency has been corrected.

1. A re-inspection will be ordered if any items of deficiency would constitute a danger to the family's health or safety (using the emergency item in Section 12.6),
2. Alternative means of verification allowed are:
  - a. The owner may certify that the corrections have been made.

- b. The owner may be required to present a receipt for the work required
  - c. A photograph of the corrected item may be presented by the owner
3. If alternative methods of verification are used, The Lakeland Housing Authority will confirm the remedy of the deficiency with the Participant.
  4. If alternative methods of verification are used, the remedy of the deficiency will be confirmed at the next inspection.
  5. A re-inspection will be ordered if any items of deficiency would constitute a danger to the family's health or safety in this chapter.

If the owner fails to correct the HQS failed items after proper notification has been given, the Lakeland Housing Authority will abate payment and terminate the HAP contract.

If the participant fails to correct the HQS failed items that are family-caused after proper notification has been given, the Lakeland Housing Authority will terminate assistance for the family.

### **Time Frames for Corrections**

1. Emergency repair items must be abated within 24 hours.
2. Repair of refrigerators, range and oven, or a major plumbing fixture supplied by the owner must be abated within 72 hours.
3. Non-emergency items must be completed within 10 calendar days of the initial inspection.
4. For major repairs, the owner will have up to 30 calendar days to complete.

### **Extensions**

At the sole discretion of the Lakeland Housing Authority, extensions of up to 30 calendar days may be granted to permit an owner to complete repairs if the owner has made a good faith effort to initiate repairs. If repairs are not completed within 60 calendar days after the initial inspection date, the Lakeland Housing Authority will abate the rent and cancel the HAP contract for owner noncompliance. Appropriate extensions will be granted if a severe weather condition exists for such items as exterior painting and outside concrete work for porches, steps, and sidewalks.

## **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

### PHA Policy

If utility service is not available for testing at the time of the initial inspection, the PHA will allow the utilities to be placed in service after the unit has met all other HQS requirements. The PHA will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the PHA.

## **Appliances [Form HUD-52580]**

### PHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the PHA. The PHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

**8-II.C. ANNUAL/BIENNIAL HQS INSPECTIONS [24 CFR 982.405; 982.406, Notice PIH 2016-05]**

PHA Policy

Each unit under HAP contract must be inspected within twenty (24) months of the last full HQS inspection. The LHA may rely on alternative inspection standards.

**Scheduling the Inspection**

PHA Policy

If an adult family member cannot be present on the scheduled date, the family should request that the PHA reschedule the inspection. The PHA and family will agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date. The PHA may schedule an inspection more than 5 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the PHA will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

**8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]**

If a participant or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

PHA Policy

During a special inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the PHA may elect to conduct a full annual inspection.

## **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]**

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

## **8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

#### PHA Policy

When life-threatening conditions are identified, the PHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the PHA's notice.

When failures that are not life-threatening are identified, the PHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated in accordance with PHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

## **Extensions**

For conditions that are life-threatening, the PHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate [24 CFR 982.404].

### PHA Policy

Extensions will be granted in cases where the PHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

## **Reinspections**

### PHA Policy

The PHA will conduct a reinspection immediately following the end of the corrective period, or any PHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the PHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with PHA policies. If the PHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the PHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

For non-life threatening fail items, the LHA will re-inspect the unit to ensure that the item was corrected. The LHA may accept written certification from the owner and the participant in lieu of performing a re-inspection as proof that the required repairs have been made. LHA reserves the right to conduct an inspection.

For owner fail items, the owner must notify the LHA when repairs are completed. If such repairs have not been made or if the re-inspection cannot be completed prior to the deadline the LHA will abate the HAP effective the first of the month following the

expiration of the correction period.

Where inspection deficiencies are the owner's responsibility the CHA will charge the owner a non-refundable \$50 fee for conducting a second re-inspection.

For participant fail items the LHA will send an Intent to Terminate (ITT) notice to the family after the second fail.



## **8-II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, the PHA must take prompt and vigorous action to enforce the owner obligations.

### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

#### PHA Policy

The PHA will make all HAP abatements effective the first of the month following the expiration of the PHA specified correction period (including any extension).

The PHA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

### **HAP Contract Termination**

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### PHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the PHA before the termination date of the HAP contract, the PHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the PHA is 30 days.

## **8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

## **PART III: RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### **PHA-Owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

## **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

### **Owner-Initiated Rent Determinations**

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the PHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

#### PHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the PHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the PHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **PHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

#### PHA Policy

In addition to the instances described above, the PHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the PHA determines that the initial rent reasonableness determination was in error or (2) the PHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

## **LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

#### **Units that Must Not Be Used as Comparables**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

*Note:* Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

## **8-III.D. PHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

#### PHA Policy

The PHA will collect and maintain data on market rents in the PHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

### **How Rents Are Determined**

#### PHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The PHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the PHA may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows:  $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \$488$ .

The PHA will notify the owner of the rent the PHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The PHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the PHA's request for information or the owner's request to submit information.



## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

### **Sanitary Facilities**

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

### **Food Preparation and Refuse Disposal**

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

### **Space and Security**

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

### **Thermal Environment**

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

### **Illumination and Electricity**

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

### **Structure and Materials**

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.



## **Interior Air Quality**

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

## **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.
- Maintain covered housing without deteriorated paint if there is child under six in the family

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

## **Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

## **Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

**Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

**Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

**Hazards and Health/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.



<p style="text-align: center;"><b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b></p>
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

- (6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

## Chapter 9

### GENERAL LEASING POLICIES

#### INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the PHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the PHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the PHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the PHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

## **9-I.A. TENANT SCREENING**

The Lakeland Housing Authority determines eligibility for participation and will also conduct criminal background checks on all household members over the age of eighteen (18) of age, including live-in aides. The Lakeland Housing Authority will deny assistance to a family because of drug-related criminal activity or violent criminal activity by family members. This check will be made through state or local law enforcement or court records in those cases where the household member has lived in the local jurisdiction for the last five years. If the individual has lived outside the local area, the Lakeland Housing Authority may contact law enforcement agencies where the individual had lived or request a check through the FBI's National Crime Information Center (NCIC). This criminal background check will proceed after each adult household member has signed a consent form designed by the Lakeland Housing Authority. The information received as a result of the criminal background check shall be used solely for screening purposes. The information shall be maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose(s) for which it was requested has been accomplished and the period for filing a challenge to the Lakeland Housing Authority's action has expired without a challenge or final disposition of any litigation has occurred.

The Lakeland Housing Authority will check with the State sex offender registration program and will ban for life any individual who is registered as a lifetime sex offender. The Lakeland Housing Authority will check with our state registry and if the applicant has resided in another State(s), with that State(s)'s list. The Lakeland Housing Authority will utilize the US Department of Justice's Dru Sjodin National Sex Offender website as an additional resource. The Dru Sjodin National Sex Offender Database is an online, searchable database, hosted by the Department of Justice, which combines the data from individual state sex offender registries.

If an applicant is about to be denied housing based on either the criminal check or the sex offender registration program, the applicant will be informed of this fact and given an opportunity to dispute the accuracy of the information before the denial occurs.

Additional screening is the responsibility of the owner. Upon the written request of a prospective owner, the Lakeland Housing Authority will provide to the owner the name, address, and phone number of the applicant's current landlord and any previous landlords that are known to the housing authority.

In addition, if an owner submits a request to the Lakeland Housing Authority for criminal records concerning an adult member of an applicant or resident household, signed consent forms, and the owner's standards for prohibiting admission, the Lakeland Housing Authority must request the criminal conviction records from the appropriate law enforcement agency or agencies, as determined by the Housing Authority. If the Lakeland Housing Authority receives criminal conviction records requested by an owner, the Lakeland Housing Authority must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction, as applicable in accordance with HUD regulations and the owner's criteria. The Lakeland Housing Authority must notify the owner whether the Housing Authority has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction.

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### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the PHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the PHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517  
>?\\??The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the PHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

### PHA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and the PHA will not process, more than one (1) RTA at a time.

When the family submits the RTA the PHA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the PHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, electronic mail or by fax. The PHA will not accept missing information over the phone.

Because of the time sensitive nature of the tenancy approval process, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties cannot be reached by phone, fax, or email.

## **9-I.C. OWNER PARTICIPATION**

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the PHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **LAKELAND HOUSING AUTHORITY DISAPPROVAL OF OWNER**

The Housing Authority will deny participation by an owner at the direction of HUD (one who has been debarred, suspended, or is subject to a limited denial of participation). The Housing Authority will also deny the owner's participation for any of the following reasons:

- A. The owner has violated any obligations under a Section 8 Housing Assistance Payments Contract;
- B. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;
- C. The owner has engaged in drug-related criminal activity or any violent criminal activity;
- D. The owner has a history or practice of non-compliance with HQS for units leased under Section 8 or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other Federal housing program;
- E. The owner has a history or practice of renting units that fail to meet State or local codes;
- F. The owner has not paid State or local real estate taxes, fines, or assessments;
- G. The owner refuses (or has a history of refusing) to evict families for drug-related or violent criminal activity, or for activity that threatens the health, safety or right of peaceful enjoyment of the:
  - 1. premises by residents, Lakeland Housing Authority employees or owner employees; or
  - 2. residences by neighbors;
- H. If the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family of an applicant seeking the initial use of a housing choice voucher (currently shopping) unless the Lakeland Housing Authority determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities;
- I. The Housing Authority has been informed by HUD that the federal government has instituted an administrative or judicial action against the owner for a violation of the Fair Housing Act or other federal equal opportunity requirements and such action is pending or a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements; or
- J. Other conflicts of interest under Federal, State, or local law.

## **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the PHA's jurisdiction. This includes the dwelling unit they are currently occupying.

### **Ineligible Units [24 CFR 982.352(a)]**

The PHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

### **PHA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by the PHA issuing the voucher may also be leased in the voucher program. In order for a PHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a PHA-owned unit without any pressure or steering by the PHA.

#### PHA Policy

The PHA does not have any eligible PHA-owned units available for leasing under the voucher program.

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the PHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the PHA has chosen to allow.

The regulations do require the PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR 982.352(c)]**

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

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

## **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

## **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

## **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the PHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

#### PHA Policy

The PHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

## **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the PHA to approve a shorter initial lease term if certain conditions are met.

### PHA Policy

The PHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The PHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

## **Security Deposit [24 CFR 982.313 (a) and (b)]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the PHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

### PHA Policy

The owner may collect a security deposit from the participant in an amount not in excess of amounts charged in private market practice and not in excess of amounts charged by the owner to unassisted residents in the same complex.

When the resident moves out of the dwelling unit, the owner, subject to State or local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid rent payable by the participant, damages to the unit or for other amounts the family owes under the lease.

The owner must give the participant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount, if any, used to reimburse the owner, the owner must refund promptly the full amount of the unused balance to the participant.



If the security deposit is not sufficient to cover amounts the participant owes under the lease, the owner may seek to collect the balance from the resident in compliance with State law.

## **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the PHA minus the PHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

### PHA Policy

The PHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

## **PHA Review of Lease**

The PHA will review the dwelling lease for compliance with all applicable requirements.

### PHA Policy

If the dwelling lease is incomplete or incorrect, the PHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties can't be reached by phone, fax, or email.

The PHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the PHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

### PHA Policy

The PHA will not review the owner's lease for compliance with state/local law.

## **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the PHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the PHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the PHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the PHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

### PHA Policy

The PHA will complete its determination within 15 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the PHA, the PHA will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The PHA will not accept corrections over the phone.

If the PHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The PHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the PHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

## **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between the PHA and the owner of the dwelling unit. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The PHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The PHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The PHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the PHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and the PHA may not pay any housing assistance payment to the owner.

### PHA Policy

Owners who have not previously participated in the HCV program must attend a meeting with the PHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The PHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the PHA. The PHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the PHA will execute the HAP contract. The PHA will not execute the HAP contract until the owner has submitted IRS form W-9. The PHA will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA and the tenant a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to owner, the owner must notify the PHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The PHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3) HA Policy]

Where the owner is requesting a rent increase, the PHA will determine whether the requested increase is reasonable within 30 calendar days of receiving the request from the owner. The owner will be notified of the determination in writing.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)] and is not enforceable until approved. No rental increase will be considered before 60 day prior to the initial contract anniversary date.

When a rental increase is submitted later than 60 days of anniversary date, the effective date of the rent increase will be the subsequent month after the effective date.

The Rent Increase Request must have the tenants signature.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside the PHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the PHA's HCV program, whether the family moves to another unit within the PHA's jurisdiction or to a unit outside the PHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the PHA's jurisdiction. This part also covers the special responsibilities that the PHA has under portability regulations and procedures.

#### PART I: MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the PHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

##### PHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the PHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the PHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)].

### PHA Policy

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will request documentation in accordance with section 16-IX.D of this plan.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the PHA will document the waiver in the family's file.

- The PHA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The PHA determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the PHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives notice to the owner. [24 CFR 982.403(a) and (c)]



## **10-I.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

### **Denial of Moves**

HUD regulations permit the PHA to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

The PHA may deny a family permission to move either within or outside the PHA's jurisdiction if the PHA does not have sufficient funding for continued assistance [24 CFR 982.354(e)(1)]. However, Notice PIH 2016-09 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

#### **PHA Policy –**

**The LHA will comply with requirements established in PIH Notice 2016-09, Section 7, “Denying Family Requests to Move - Insufficient Funding”.**

#### ***Grounds for Denial or Termination of Assistance***

The PHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

#### **PHA Policy**

If the PHA has grounds for denying or terminating a family's assistance, the PHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

#### **Restrictions on Elective Moves [24 CFR 982.354(c)]**

HUD regulations permit the PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section

10-I.A.) In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

### PHA Policy

The PHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the PHA's jurisdiction or outside it under portability.

The PHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the PHA's jurisdiction.

The PHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify the PHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)(2)]. If the family wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the family wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

### **Approval**

#### PHA Policy

Upon receipt of a family's notification that it wishes to move, the PHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The PHA will notify the family in writing of its determination within 30 days following receipt of the family's notification. - ???????

### **Reexamination of Family Income and Composition**

#### PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### PHA Policy

For families approved to move to a new unit within the PHA's jurisdiction, the PHA will issue a new voucher within 15 days the PHA's written approval to move. Briefing is mandatory for all families moving to a new unit. The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking. The PHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the PHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the PHA's jurisdiction under portability, the PHA will follow the policies set forth in Part II of this chapter.

### **Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the PHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

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

## PART II: PORTABILITY

### 10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the **initial PHA**. The PHA that has jurisdiction in the area to which the family wants to move is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA provides all housing services for the family and bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

## **10-II.B. INITIAL PHA ROLE**

### **Allowable Moves under Portability**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives the PHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

### **PHA Policy**

In determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter. If the PHA does deny the move due to insufficient funding, the PHA will follow guidance according to PIH Notice 2016-09.

In addition, the PHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

### **PHA Policy**

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the PHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking.

### ***Participant Families***

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act of 2013 (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.353(b)].

#### **PHA Policy**

The PHA will determine whether a participant family may move out of the PHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The PHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

### **Determining Income Eligibility**

#### ***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2016-09].

#### ***Participant Families***

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

#### **PHA Policy**

For a participant family approved to move out of its jurisdiction under portability, the PHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The PHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.



## **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this plan require the PHA to provide information on portability to all applicant families that qualify to lease a unit outside the PHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

### PHA Policy

No formal briefing will be required for a participant family wishing to move outside the PHA's jurisdiction under portability. However, the PHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).

The PHA will provide the name, address, and phone of the contact for the PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, the PHA will advise the family that the family selects the receiving PHA and notify the initial PHA of which receiving PHA was selected. The PHA will provide the family with contact information for all of the receiving PHAs that serve the area. The PHA will not provide any additional information about receiving PHAs in the area. The PHA will further inform the family that if the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family. In this case, the PHA will not provide the family with information for all receiving PHAs in the area.

The PHA will advise the family that they will be under the RHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

## **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the PHA will follow the regulations and procedures set forth in Chapter 5.

### PHA Policy

For participating families approved to move under portability, the PHA will issue a new voucher within 10 business days of the PHA's written approval to move.

The initial term of the voucher will be 60 days.

## **Voucher Extensions and Expiration**

### PHA Policy

The PHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the PHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

## **Preapproval Contact with the Receiving PHA**

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

### PHA Policy

The PHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

## **Initial Notification to the Receiving PHA**

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

### PHA Policy

Because the portability process is time-sensitive, the PHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The PHA will pass this information along to the family. The PHA will also ask for the

name, address, telephone number, fax and e-mail of the person responsible for processing the billing information.

## **Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

### PHA Policy

In addition to these documents, the PHA will provide the following information, if available, to the receiving PHA:

Social security numbers (SSNs)

Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

Documentation of participation in a family self-sufficiency (FSS) program

The PHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

### **Initial Billing Deadline [Notice PIH 2016-09]**

The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the initial PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

#### PHA Policy

If the PHA has not received an initial billing notice from the receiving PHA within the billing deadline, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The PHA will send the receiving PHA a written confirmation of its decision by mail.

The PHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]**

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

#### PHA Policy

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

### **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

### **Denial or Termination of Assistance [24 CFR 982.355(c)(17)]**

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

## **10-II.C. RECEIVING PHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

### **Responding to Initial PHA's Request [24 CFR 982.355(c)]**

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4)).

#### PHA Policy

The PHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

### **Initial Contact with Family**

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)]. An informal hearing is not required when a voucher has expired without the family leasing a unit.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2016-09]. (For more on this topic, see later under "Denial or Termination of Assistance.")

## **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

### PHA Policy

The PHA will not require the family to attend a briefing. The PHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the PHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

## **Income Eligibility and Reexamination**

The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

### PHA Policy

For any family moving into its jurisdiction under portability, the PHA will conduct a new reexamination of family income and composition. However, the PHA will not delay issuing the family a voucher for this reason. Nor will the PHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

????? Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.



## **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(15)].

### ***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

#### PHA Policy

When a family ports into its jurisdiction, the PHA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)]. If the initial PHA extends the term of the voucher, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher [Notice PIH 2016-09].

#### PHA Policy

The receiving PHA's voucher will expire 30 calendar days from the expiration date of the initial PHA's voucher. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

### ***Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]***

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

#### PHA Policy

The PHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the PHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The PHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

### ***Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]***

If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

### **Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

### **Administering a Portable Family's Voucher**

#### ***Portability Billing [24 CFR 982.355(e)]***

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

#### **PHA Policy**

Unless the PHA negotiates a different amount of reimbursement with the initial PHA, the PHA will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

#### PHA Policy

The PHA will send its initial billing notice by fax or e-mail, if provided necessary, it will be sent by mail to meet the billing deadline.

If the receiving PHA fails to send the initial billing by the deadline, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2016-09].

### ***Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]***

**Annual Reexamination.** The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### PHA Policy

The PHA will send a copy of the updated HUD-50058 by regular mail no later than 10 business days after the effective date of the reexamination.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

#### ***Late Payments [Notice PIH 2016-09]***

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

#### ***Overpayments [Notice PIH 2016-09]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2016-09.

### ***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2016-09].

#### PHA Policy

If the PHA elects to deny or terminate assistance for a portable family, the PHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The PHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement. [Notice PIH 2016-09].

#### PHA Policy

If the PHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the PHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the PHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice, but no later than 10 business days following the effective date of the termination of the billing arrangement.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].

## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

The PHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and PHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

#### **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

##### **11-I.A. OVERVIEW**

The PHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.



## **11-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 982.516(b)]**

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

### PHA Policy

The PHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The PHA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the PHA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the PHA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

## 11-I.C. SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

### PHA Policy

The PHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the PHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the PHA will perform a new annual reexamination.

The PHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

## Notification of and Participation in the Annual Reexamination Process

The PHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

### PHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or cohead. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the PHA to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination process will be sent by first-class mail and will contain the deadline to complete the reexamination.. In addition, it will inform the family of the information and documentation that must be provided.

In extremely circumstances where in-person interview is required, and the the family is unable to attend, the family should contact the PHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the PHA will send a second notification with a new interview date and appointment time.

If a family fails to attend two scheduled interviews without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the PHA must execute a certification attesting to the role and the assistance provided by any such third party.

## 11-I.D. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

### PHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

### PHA Policy

At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the PHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the housing quality standards (HQS) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

### **11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]**

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

#### PHA Policy

During the annual reexamination process, the PHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the PHA will process a reexamination in accordance with the policies in this chapter.

## 11-I.F. EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

### PHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, the 30-day notice is not required and the *increases* in the family share of the rent will be applied according to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the PHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the PHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA from completing the reexamination as scheduled.





## PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

### 11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the PHA must process interim reexaminations to reflect those changes. HUD regulations also permit the PHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- and family-initiated interim reexaminations.

### 11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The family is required to report all changes in family composition. The PHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

#### PHA Policy

The PHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring PHA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

#### PHA Policy

The family must inform the PHA of the birth, adoption, or court-awarded custody of a child within 30 calendar days.

## **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

### PHA Policy

Families must request PHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the PHA prior to the individual moving into the unit.

The PHA will not approve the addition of a new family or household member unless the individual meets the PHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The PHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the PHA determines an individual meets the PHA's eligibility criteria and documentation requirements, the PHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the PHA determines that an individual does not meet the PHA's eligibility criteria or documentation requirements, the PHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The PHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

Families must promptly notify the PHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

#### PHA Policy

If a household member ceases to reside in the unit, the family must inform the PHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the PHA within 10 business days.

## **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

### **PHA-Initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

#### PHA Policy

The PHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the PHA will conduct an interim reexamination at the start and conclusion of the 24-month eligibility period.

If the family has reported zero income, the PHA will conduct an interim reexamination as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the PHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the PHA will conduct an interim reexamination.

The PHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

## **Family-Initiated Interim Reexaminations**

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

### ***Required Reporting***

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### PHA Policy

Families are required to report all increases in earned income, including new employment, within 30 calendar days of the date the change takes effect. The change form needs to be submitted with the proper documentation for it to be processed.

During an interim reexamination only the information affected by the changes being reported, will be reviewed. Families are required to report, in writing, any change in household income. The LHA will complete and process an interim if the increase is due to a new source of income.

In order to promote a higher level of self-sufficiency, if the increase is from an already established source of income, the increase will be captured at the next annual recertification.

The threshold in determining whether or not an interim should be processed is in excess of \$2,400.00. This is because the Income Discrepancy Report identifies families that may have substantially underreported income. A difference of \$2,400 or greater annually, between what is reflected on the form HUD-50058 and what is reflected on the EIV Income Report, for a period of income (POI), is considered a substantial amount with respect to underreported tenant income.

The PHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The PHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

#### PHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the PHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, the PHA will conduct an interim reexamination. See Section 11-II.D. for effective dates.

## 11-II.D. PROCESSING THE INTERIM REEXAMINATION

### Method of Reporting

#### PHA Policy

The family may notify the PHA of changes either orally or in writing. If the family provides oral notice, the PHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the PHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the PHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the PHA with the applicable Change Form. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, by fax, or in person.

### Effective Dates

The PHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

#### PHA Policy

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

### 11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### 11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.



## **Subsidy Standards [24 CFR 982.505(c)(4)]**

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

The Lakeland Housing Authority may take administrative action at any time, if warranted by HUD funding limitations and/or reductions, to reduce its subsidy standards to two people per bedroom and living area with no exceptions. The Lakeland Housing Authority may take the administrative action at any time to increase its subsidy standards, if funding allows and if necessary to improve or maintain the viability of the program.

## **Utility Allowances [24 CFR 982.517(d)]**

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the PHA must use the PHA current utility allowance schedule [24 CFR 982.517(d)(2)].

### PHA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

## **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

The PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

### PHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

#### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a PHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the PHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the PHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA will use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

#### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

##### 12-I.A. OVERVIEW

HUD requires the PHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the PHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

## General List of Grounds for Termination

- A. If the family violates any family obligations under the program;
- B. If the family was evicted from housing assisted under the Section 8 program for serious violations of the lease;
- C. If a family member fails to sign and submit consent forms;
- D. If a family fails to establish citizenship or eligible immigrant status and is not eligible for or does not elect continuation of assistance, pro-ration of assistance, or temporary deferral of assistance. If the Lakeland Housing Authority determines that a family member has knowingly permitted an ineligible noncitizen (other than any ineligible noncitizens listed on the lease) to permanently reside in their Section 8 unit, the family's assistance will be terminated. Such family will not be eligible to be readmitted to Section 8 for a period of 24 months from the date of termination;
- E. Have a household member who is currently engaging in illegal use of a drug;
- F. Have a household member whose pattern of illegal drug use interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents;
- G. Have a household member who has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing;
- H. Have a household member who is subject to a lifetime registration requirement under a State sex offender registration program;
- I. If any member of the family commits drug-related or violent criminal activity in violation of Section 2.3 of this Administrative Plan and 24 CFR 982.551;
- J. Have a household member whose abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;
- K. Have a household member who is a fugitive felon, parole violator or person fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees;
- L. Have a family member who violates any family obligations under the program;
- M. Have a family member who has been evicted from federally assisted housing in the last five years;
- N. Have a family member that Lakeland Housing Authority has ever terminated assistance for under the program;
- O. Have a family member that has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;

P. Currently owes rent or other amounts to the Lakeland Housing Authority or to another Housing Authority in connection with Section 8 or public housing assistance under the 1937 Act;

Q. Have not reimbursed any Housing Authority for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease;

R. Have breached an agreement with Lakeland Housing Authority to pay amounts owed to a Housing Authority, or amounts paid to an owner by a Housing Authority;

S. If a family participating in the Family Self-Sufficiency Program fails to comply, without good cause, with the family's FSS Contract of Participation;

T. Have engaged in or threatened abusive or violent behavior towards any Lakeland Housing Authority staff member or resident;

#### **12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the PHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

##### PHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that the PHA terminate housing assistance payments on behalf of the family at any time.

#### PHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the PHA will follow the notice requirements in Section 12-II.F.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires the PHA to terminate assistance in the following circumstances.

#### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]**

The PHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

#### PHA Policy

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases the PHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, the PHA will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

#### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

The PHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]**

The PHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the PHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

### **Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]**

The PHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the PHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the PHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the PHA determined the family to be noncompliant.

#### PHA Policy

The PHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

### **Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

The PHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

### **Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.



In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

### **Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the PHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

### **Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

The PHA must immediately terminate program assistance for deceased single member households.

## **12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

### **Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

HUD requires the PHA to establish policies that permit the PHA to terminate assistance if the PHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

## *Use of Illegal Drugs and Alcohol Abuse*

### PHA Policy

The PHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The PHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

*Currently engaged in* is defined as any use of illegal drugs during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

### ***Drug-Related and Violent Criminal Activity [24 CFR 5.100]***

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Drug-related criminal activity* is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

#### PHA Policy

The PHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The PHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

## **Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c)]**

HUD permits the PHA to terminate assistance under a number of other circumstances. It is left to the discretion of the PHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2013 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such abuse.

### PHA Policy

The PHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

The PHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the PHA.

A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

*Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the PHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate assistance.

### ***Family Absence from the Unit [24 CFR 982.312]***

The family may be absent from the unit for brief periods. The PHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

#### PHA Policy

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

### ***Insufficient Funding [24 CFR 982.454]***

The PHA may terminate HAP contracts if the PHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

#### PHA Policy

The PHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the PHA determines there is a shortage of funding, prior to terminating any HAP contracts, the PHA will determine if any other actions can be taken to reduce program costs.

In the event that the PHA decides to stop issuing vouchers as a result of a funding shortfall, and the PHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the PHA resumes issuing vouchers, the PHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the PHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the PHA will inform the local HUD field office. The PHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If the PHA must terminate HAP contracts due to insufficient funding, the PHA will do so in accordance with the following criteria and instructions:

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

***[Insert additional criteria and instructions for HAP terminations due to insufficient funding]***



## PART II: APPROACH TO TERMINATION OF ASSISTANCE

### 12-II.A. OVERVIEW

The PHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the PHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the PHA may choose to take when it has discretion, and outlines the criteria the PHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the PHA's intent to terminate assistance.

### 12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

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

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

### 12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

#### **Change in Household Composition**

As a condition of continued assistance, the PHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

##### PHA Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon PHA request.

#### **Repayment of Family Debts**

##### PHA Policy

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When families or owners owe money to the LHA, the LHA will make every effort to collect it.

The LHA will use a variety of collection tools to recover debts including, but not limited to:

Requests for lump sum payments

Civil suits

Payment agreements

Abatements

Reductions in HAP to owner  
Collection agencies  
Credit bureaus  
Income tax set-off programs

**PAYMENT AGREEMENT FOR FAMILIES [24 CFR 982.552 (b)(6-8)]**

A Payment Agreement as used in this Plan is a document entered into between the LHA and a person who owes a debt to the LHA. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the LHA upon default of the agreement.

The LHA will prescribe the terms of the payment agreement, including determining whether to enter into a payment agreement with the family based on the circumstances surrounding the debt to the LHA.

There are some circumstances in which the LHA will not enter into a payment agreement.

- A. If the family already has a Repayment Agreement in place.
- B. If the LHA determines that the family committed program fraud.
- C. If the LHA determines that the debt amount is larger than can be paid back by the family in a reasonable amount of time.

The maximum length of time the LHA will enter into a payment agreement with a family is 12 months. Prior to enter into a repayment agreement, a down payment of 25-50% will be required. The minimum amount of monthly payment for any payment agreement is \$25.00.

**Payment Schedule for Monies Owed to the LHA**

The Director of Housing or the designee has discretion to allow for flexibility in the payment schedule.

**Late Payments**

A payment will be considered to be in arrears if:

- The payment has not been received by the close of the business day on which the payment was due.
- If the due date is on a weekend or holiday, the due date will be at the close of the next business day.
- If the family's payment agreement is in arrears, and the family has not contacted or made arrangements with the LHA, the LHA will:

Require the family to pay the balance in full  
Pursue civil collection of the balance due  
Terminate the housing assistance  
Grant an extension of thirty (30) days

If the family requests a move to another unit and has a payment agreement in place and the payment agreement is not in arrears:

The family will be required to pay the balance in full prior to the issuance of a voucher.

If the family requests a move to another unit and is in arrears on a payment agreement:

The family will be required to pay the balance in full, or be terminated from the program.

If the family pays the past due amount, they will be permitted to move.

**DEBTS DUE TO MISREPRESENTATIONS/NON-REPORTING OF INFORMATION** [24 CFR 982.163]

HUD's definition of program fraud and abuse is a single act or pattern of actions that:  
Constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of Section 8 program funds in violation of Section 8 program requirements.

**Family Error/Late Reporting**

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the guidelines in the Payment Agreement Section of this Chapter, and/or;

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the payment procedures for program fraud as stated in the Program Integrity Addendum and/or;

Families who owe money to the LHA due to the family's failure to report increases in income will be required to pay in a lump sum within ten (10) days. If the family pays the amount in full within this time period, the LHA may continue assistance to the family.

**Program Fraud**

Families who owe money to the LHA due to program fraud will be required to repay in accordance with the guidelines in the Payment Agreement and/or;

Families who owe money to the LHA due to program fraud may be required to pay in accordance with the payment procedures for program fraud and/or;

Families who owe money to the LHA due to program fraud may be required to pay the amount in full within thirty (30) days. If the full amount is paid within this time period, and the family is still eligible, the LHA may continue assistance to the family.

If a family owes an amount which equals or exceeds \$5,000.00 dollars as a result of program fraud, the case will be referred to the Inspector General. Where appropriate, the LHA will refer the case for criminal prosecution. -?????

**GUIDELINES FOR PAYMENT AGREEMENTS**

The Repayment Agreements are executed between the LHA and the head of household. The Repayment Agreement must be executed by the Director of Housing or his/her designee. The payments may only be made by money order or cashier's check. The agreement will be in default when a payment is delinquent by the 25<sup>th</sup>. of the month.

If the agreement is in default, the family's assistance will be terminated unless the LHA receives the balance of the Repayment Agreement in full within (30) days of the termination notice. A Repayment Agreement will be considered to be in default when it is in arrears for two months.

No move will be approved until the debt is paid in full unless the move is the result of the following causes, and the Repayment Agreement is current:

Family size exceeds the HQS maximum occupancy standards.

The HAP contract is terminated due to owner non-compliance or opt-out.

A natural disaster.

Additional Monies Owed: If the family already has a Repayment Agreement in place and incurs an additional debt to the LHA:

The LHA will not enter into more than one Repayment Agreement with the family.

Additional amounts owed by the family will be added to the existing payment agreement.

If a Repayment Agreement is in arrears more than (60) calendar days, any new debts must be paid in full.

\*\*Exception to these guidelines can only be made by the Director of Housing or his/her designee.

### **OWNER DEBTS TO THE LHA**

If the LHA determines that the owner has retained Housing Assistance Payments the owner is not entitled to, the LHA may reclaim the amounts from future Housing Assistance Payments owed the owner for any units under contract. If future Housing Assistance Payment are insufficient to reclaim the amounts owed, the LHA will require the owner to pay the amount in full within thirty (30) calendar days.

### **WRITING OFF DEBTS**

Debts will be written off if:

- Attempts have failed through collection agencies.
- The debtor's whereabouts are unknown and the debt is more than one (1) year old.
- The debtor is deceased or incarcerated and debt is more than one (1) year old.
- The cost to collect would exceed recovery amount.
- Although the debt is removed from the ledger, it will still be permanent record and collectible.

### **Payments Procedures for Program Fraud or Untimely Reporting Increases**

Families who commit program fraud or untimely reporting of increases in income will be subject to the following procedures:

The maximum time period for a Repayment Agreement will be twelve (12) months, with discretion allowed by the Director of Housing or their designee.

The family will be required to prepay a percentage according to the amount owe as listed below:

- a. Up to \$1,000.00 – 40% prepay
- b. \$1,001.00 to \$2,500 – 50% prepay
- c. \$2,501.00 or more – 60% prepay

A repayment agreement will be executed for the remaining balance, with a monthly installments.

If a family owes amounts to the PHA, as a condition of continued assistance, the PHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

## 12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

### Evidence

For criminal activity, HUD permits the PHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

#### PHA Policy

The PHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

### Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

THE PHA IS PERMITTED, BUT NOT REQUIRED, TO CONSIDER ALL RELEVANT CIRCUMSTANCES WHEN DETERMINING WHETHER A FAMILY'S ASSISTANCE SHOULD BE TERMINATED.

#### PHA Policy

The PHA will consider the following facts and circumstances when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault or stalking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record of arrest(s) will not be used as the basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:

Any statements made by witnesses or the participant not included in the police report

Whether criminal charges were filed

Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The PHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

#### **Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]**

If the family includes a person with disabilities, the PHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### PHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the PHA will determine whether the behavior is related to the disability. If so, upon the family's request, the PHA will determine whether alternative measures are appropriate as a reasonable accommodation. The PHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.



## **12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING**

## **13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

This section addresses the protections against termination of tenancy that the Violence against Women Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, or stalking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

### **VAWA Protections against Termination [24 CFR 5.2005(c)]**

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13].

### **Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]**

While VAWA prohibits a PHA from using domestic violence, dating violence, sexual assault, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, or stalking providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk



- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim’s assistance “only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat” [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions “predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents” [24 CFR 5.2005(d)(3)].

PHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the PHA’s determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

**Documentation of Abuse [24 CFR 5.2007]**

PHA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, the PHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual’s file.

## **Terminating Perpetrator of Domestic Violence**

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or remove a household member from a lease, “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing” [FR Notice 8/6/13]. Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming the PHA’s authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07].

### PHA Policy

The PHA will bifurcate a family’s lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-53825382) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-VII.D. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the PHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the PHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

This section describes the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements, key VAWA definitions, and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

## **VAWA Protections against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

## Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

### PHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the PHA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

## **Documentation of Abuse [24 CFR 5.2007]**

### PHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault or stalking claims protection under VAWA, the PHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual's file.

## **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the PHA the explicit authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others” without terminating assistance to “or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant” [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

### PHA Policy

The PHA will terminate assistance to a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-IX.D. The PHA will also consider the factors in section 12-II.D. Upon such consideration, the PHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the PHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

## 12-II.F. TERMINATION NOTICE

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

### PHA Policy

Whenever a family's assistance will be terminated, the PHA will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-50066 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other PHA policies, or the circumstances surrounding the termination require.

When the PHA notifies an owner that a family's assistance will be terminated, the PHA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require PHAs to provide notice of VAWA rights and the HUD 50066 form when a PHA terminates a household's housing benefits.

### PHA Policy

Whenever the PHA decides to terminate a family's assistance because of the family's action or failure to act, the PHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-50066. The PHA will request in writing that a family member wishing to claim protection under VAWA notify the PHA within 10 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.





## PART III: TERMINATION OF TENANCY BY THE OWNER

### 12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the PHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

### 12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

#### **Serious or Repeated Lease Violations**

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the PHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

#### **Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

#### **Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### ***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the PHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the PHA a copy of any eviction notice (see Chapter 5).

#### PHA Policy

If the eviction action is finalized in court, the owner must provide the PHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

#### **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

#### **12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if the PHA has no other grounds for termination of assistance, the PHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

Following is a listing of a participant family's obligations under the HCV program:

- The family must supply any information that the PHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

### PHA Policy

Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

### PHA Policy

The PHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

- The family must notify the PHA and the owner before moving out of the unit or terminating the lease.

### PHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the PHA at the same time the owner is notified.

- The family must promptly give the PHA a copy of any owner eviction notice.

- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly notify the PHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

#### PHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The PHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the PHA in writing if any family member no longer lives in the unit.
- If the PHA has given approval, a foster child or a live-in aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

#### PHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the PHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the PHA when the family is absent from the unit.

#### PHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the PHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and PHA policies related to drug-related and violent criminal activity.



- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the PHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

## Chapter 13

### OWNERS

#### INTRODUCTION

Owners play a major role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the PHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the PHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including PHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.



## **PART I. OWNERS IN THE HCV PROGRAM**

### **13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]**

#### **Recruitment**

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the PHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

#### PHA Policy

The PHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The PHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Holding owner recruitment/information meetings at least once a year
- Participating in community based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

## **Retention**

In addition to recruiting owners to participate in the HCV program, the PHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

### PHA Policy

All PHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.

The PHA will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.

The PHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated PHA contact person.

- Coordinating inspection and leasing activities between the PHA, the owner, and the family.

- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.

- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires the PHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the PHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the PHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

#### PHA Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the PHA. The PHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the PHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The PHA will inspect the owner's dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

The PHA must determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the PHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.



### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the PHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

### **13-I.D. OWNER QUALIFICATIONS**

The PHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the PHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

#### **Owners Barred from Participation [24 CFR 982.306(a) and (b)]**

The PHA must not approve the assisted tenancy if the PHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the PHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### **Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]**

The PHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The PHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]**

The PHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the PHA (except a participant commissioner)
- Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The PHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA must include the following [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the PHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the PHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the PHA has requested a conflict of interest waiver, the PHA may not execute the HAP contract until HUD has made a decision on the waiver request.

### PHA Policy

In considering whether to request a conflict of interest waiver from HUD, the PHA will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety.

## **Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

HUD regulations permit the PHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the PHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

### PHA Policy

The PHA will refuse to approve a request for tenancy if the PHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the PHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes; or

The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the PHA will consider any mitigating factors. Such factors may include, but are

not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the PHA may, on a case-by-case basis, choose to approve an owner.

## **Legal Ownership of Unit**

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

### PHA Policy

The PHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

### **13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]**

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the PHA.

The owner must cooperate with the PHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the PHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.



## **PART II. HAP CONTRACTS**

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between the PHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the PHA's obligations. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family approved by the PHA to occupy the unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the PHA's HCV program.

When the PHA has determined that the unit meets program requirements and the tenancy is approvable, the PHA and owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.



### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the PHA representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

PHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

#### PHA Policy

The PHA has not adopted a policy that defines when the housing assistance payment by the PHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## **13-II.C. HAP CONTRACT PAYMENTS**

### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, the PHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The PHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the PHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the PHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the PHA, the excess amount must be returned immediately. If the PHA determines that the owner is not entitled to all or a portion of the HAP, the PHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

### **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By accepting monthly payment issuances on the PHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR 982.451(a)(5)]**

The PHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if the PHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The PHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the PHA's control. In addition, late payment penalties are not required if the PHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

### **Termination of HAP Payments [24 CFR 982.311(b)]**

The PHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the PHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

#### PHA Policy

The owner must inform the PHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the PHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the PHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the PHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the PHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]**

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the PHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The PHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination of the HAP contract. The PHA may also obtain additional relief by judicial order or action.

The PHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The PHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

#### PHA Policy

Before the PHA invokes a remedy against an owner, the PHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the PHA will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the PHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the

owner's record of compliance and the number and seriousness of any prior HAP contract violations.



### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the PHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by the PHA;
- The Annual Contributions Contract (ACC) between the PHA and HUD expires
- The PHA elects to terminate the HAP contract.

#### PHA Policy

The PHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the PHA terminates the HAP contract, the PHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

### PHA Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the PHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the PHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### **13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of the PHA.

An owner under a HAP contract must notify the PHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the PHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the PHA finds acceptable. The new owner must provide the PHA with a copy of the executed agreement.

#### PHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The PHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, the PHA will inform the current owner in writing whether the assignment may take place. A change of ownership packet will be requested to be submitted with the supporting documentation.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the PHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the PHA will process the leasing in accordance with the policies in Chapter 9.

## Chapter 14

### PROGRAM INTEGRITY

#### INTRODUCTION

The PHA is committed to ensuring that subsidy funds made available to the PHA are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate, and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents PHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the PHA must and may take when errors or program abuses are found.



## **PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### PHA Policy

To ensure that the PHA’s HCV program is administered according to the highest ethical and legal standards, the PHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The PHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The PHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The PHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the PHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The PHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family or owner.

PHA staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

At every regular reexamination, PHA staff will explain any changes in HUD regulations or PHA policy that affect program participants.

The PHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The PHA will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.

The PHA will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

#### **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

##### **Quality Control and Analysis of Data**

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the PHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

##### PHA Policy

In addition to the SEMAP quality control requirements, the PHA will employ a variety of methods to detect errors and program abuse.

The PHA routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number and any other private or public databases available to the PHA.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The PHA will compare family-reported income and expenditures to detect possible unreported income.

##### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the PHA of errors and potential cases of program abuse.

##### PHA Policy

The PHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the PHA's error detection and abuse prevention efforts.



## **Individual Reporting of Possible Errors and Program Abuse**

### PHA Policy

The PHA will encourage staff, program participants, and the public to report possible program abuse.

## 14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

### When the PHA Will Investigate

#### PHA Policy

The PHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the PHA to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The PHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

### Consent to Release of Information [24 CFR 982.516]

The PHA may investigate possible instances of error or abuse using all available PHA and public records. If necessary, the PHA will require HCV families to sign consent forms for the release of additional information.

### Analysis and Findings

#### PHA Policy

The PHA will base its evaluation on a preponderance of the evidence collected during its investigation.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the PHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the PHA, and (3) what corrective measures or penalties will be assessed.

## **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the PHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### PHA Policy

In the case of family-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the PHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

## **Notice and Appeals**

### PHA Policy

The PHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the PHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

## PART II: CORRECTIVE MEASURES AND PENALTIES

### 14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

#### PHA Policy

Increases in the family share will be implemented on the first of the month following a written 30-day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

#### Reimbursement

Whether the family or owner is required to reimburse the PHA or the PHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### 14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the PHA to use incorrect information provided by a third party.

DEBTS DUE TO MISREPRESENTATIONS/NON-REPORTING OF INFORMATION [24 CFR 982.163]

HUD's definition of program fraud and abuse is a single act or pattern of actions that:

Constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of Section 8 program funds in violation of Section 8 program requirements.

#### Family Error/Late Reporting

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the guidelines in the Payment Agreement Section of this Chapter, and/or;

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the payment procedures for program fraud and/or;

#### Program Fraud

Families who owe money to the LHA due to program fraud will be required to repay in accordance with the guidelines in the Payment Agreement Section of this Chapter, and/or;

Families who owe money to the LHA due to program fraud may be required to pay in accordance with the payment procedures for program fraud and/or; Families who owe money to the LHA due to program fraud may be required to pay the amount in full within thirty (30) days. If the full amount is paid within this time period, and the family is still eligible, the LHA may continue assistance to the family.

If a family owes an amount which equals or exceeds \$5,000.00 dollars as a result of program fraud, the case will be referred to the Inspector General. Where appropriate, the LHA will refer the case for criminal prosecution.

#### **Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]**

##### PHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. Prior to entering into a repayment agreement, a downpayment of 25-50% will be required. The minimum amount of monthly payment for any payment agreement is \$25.00. If the family fails to repay the excess subsidy, the PHA will terminate the family's assistance in accordance with the policies in Chapter 12.

When families or owners owe money to the LHA, the LHA will make every effort to collect it.

The LHA will use a variety of collection tools to recover debts including, but not limited to:

Requests for lump sum payments

Civil suits

Payment agreements

Abatements

Reductions in HAP to owner

Collection agencies

Credit bureaus  
Income tax set-off programs

**PAYMENT AGREEMENT FOR FAMILIES [24 CFR 982.552 (b)(6-8)]**

A Payment Agreement as used in this Plan is a document entered into between the LHA and a person who owes a debt to the LHA. It is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the LHA upon default of the agreement. A downpayment will be required to establish and sign

The LHA will prescribe the terms of the payment agreement, including determining whether to enter into a payment agreement with the family based on the circumstances surrounding the debt to the LHA.

There are some circumstances in which the LHA will not enter into a payment agreement.

- A. If the family already has a Repayment Agreement in place.
- B. If the LHA determines that the family committed program fraud.
- C. If the LHA determines that the debt amount is larger than can be paid back by the family in a reasonable amount of time.

The maximum length of time the LHA will enter into a payment agreement with a family is 12 months. Prior to enter into a repayment agreement, a down payment of 25-50% will be required. The minimum amount of monthly payment for any payment agreement is \$25.00.

**Payment Schedule for Monies Owed to the LHA**

The Director of Housing or the designee has discretion to allow for flexibility in the payment schedule.

**Late Payments**

A payment will be considered to be in arrears if:

- The payment has not been received by the close of the business day on which the payment was due.
- If the due date is on a weekend or holiday, the due date will be at the close of the next business day.
- If the family's payment agreement is in arrears, and the family has not contacted or made arrangements with the LHA, the LHA will:

Require the family to pay the balance in full

Pursue civil collection of the balance due

Terminate the housing assistance

Grant an extension of thirty (30) days

If the family requests a move to another unit and has a payment agreement in place and the payment agreement is not in arrears:

The family will be required to pay the balance in full prior to the issuance of a voucher.

If the family requests a move to another unit and is in arrears on a payment agreement:

The family will be required to pay the balance in full, or be terminated from the program.

If the family pays the past due amount, they will be permitted to move.

## **DEBTS DUE TO MISREPRESENTATIONS/NON-REPORTING OF INFORMATION [24 CFR 982.163]**

HUD's definition of program fraud and abuse is a single act or pattern of actions that:  
Constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead, and that results in payment of Section 8 program funds in violation of Section 8 program requirements.

### **Family Error/Late Reporting**

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the guidelines in the Payment Agreement Section of this Chapter, and/or;

Families who owe money to the LHA due to the family's failure to report increases in income will be required to repay in accordance with the payment procedures for program fraud and/or;

Families who owe money to the LHA due to the family's failure to report increases in income will be required to pay in a lump sum within ten (10) days. If the family pays the amount in full within this time period, the LHA may continue assistance to the family.

### **Program Fraud**

Families who owe money to the LHA due to program fraud will be required to repay in accordance with the guidelines in the Payment Agreement and/or;

Families who owe money to the LHA due to program fraud may be required to pay in accordance with the payment procedures for program fraud and/or;

Families who owe money to the LHA due to program fraud may be required to pay the amount in full within thirty (30) days. If the full amount is paid within this time period, and the family is still eligible, the LHA may continue assistance to the family.

**If a family owes an amount which equals or exceeds \$5,000.00 dollars as a result of program fraud, the case will be referred to the Inspector General. Where appropriate, the LHA will refer the case for criminal prosecution. -??????**

## **GUIDELINES FOR PAYMENT AGREEMENTS**

The Repayment Agreements are executed between the LHA and the head of household. The Repayment Agreement must be executed by the Director of Housing or his/her designee. The payments may only be made by money order or cashier's check. The agreement will be in default when a payment is delinquent by the 25<sup>th</sup>. of the month.

If the agreement is in default, the family's assistance will be terminated unless the LHA receives the balance of the Repayment Agreement in full within (30) days of the termination notice. A Repayment Agreement will be considered to be in default when it is in arrears for two months.

No move will be approved until the debt is paid in full unless the move is the result of the following causes, and the Repayment Agreement is current:

Family size exceeds the HQS maximum occupancy standards.

The HAP contract is terminated due to owner non-compliance or opt-out.

A natural disaster.

Additional Monies Owed: If the family already has a Repayment Agreement in place and incurs an additional debt to the LHA:

The LHA will not enter into more than one Repayment Agreement with the family.

Additional amounts owed by the family will be added to the existing payment agreement.

If a Repayment Agreement is in arrears more than (60) calendar days, any new debts must be paid in full.

\*\*Exception to these guidelines can only be made by the Director of Housing or his/her designee.

### **OWNER DEBTS TO THE LHA**

If the LHA determines that the owner has retained Housing Assistance Payments the owner is not entitled to, the LHA may reclaim the amounts from future Housing Assistance Payments owed the owner for any units under contract. If future Housing Assistance Payment are insufficient to reclaim the amounts owed, the LHA will require the owner to pay the amount in full within thirty (30) calendar days.

### **WRITING OFF DEBTS**

Debts will be written off if:

- Attempts have failed through collection agencies.
- The debtor's whereabouts are unknown and the debt is more than one (1) year old.
- The debtor is deceased or incarcerated and debt is more than one (1) year old.
- The cost to collect would exceed recovery amount.
- Although the debt is removed from the ledger, it will still be permanent record and collectible.

### **Payments Procedures for Program Fraud or Untimely Reporting Increases**

Families who commit program fraud or untimely reporting of increases in income will be subject to the following procedures:

The maximum time period for a Repayment Agreement will be twelve (12) months, with discretion allowed by the Director of Housing or their designee.

The family will be required to prepay a percentage according to the amount owe as listed below:

- a. Up to \$1,000.00 – 40% prepay
- b. \$1,001.00 to \$2,500 – 50% prepay
- c. \$2,501.00 or more – 60% prepay

A repayment agreement will be executed for the remaining balance, with a monthly installments.



**PHA Reimbursement to Family [HCV GB p. 22-12]**

PHA Policy

The PHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

## **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

### PHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the PHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the PHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g. income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

The PHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

## **Penalties for Program Abuse**

In the case of program abuse caused by a family the PHA may, at its discretion, impose any of the following remedies.

- The PHA may require the family to repay excess subsidy amounts paid by the PHA, as described earlier in this section.

- The PHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The PHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The PHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

#### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### **Owner Reimbursement to the PHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### PHA Policy

In cases where the owner has received excess subsidy, the PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

#### PHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by the PHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to the PHA Board of Commissioners, employees, contractors, or other PHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the PHA

Residing in the unit with an assisted family

## **Remedies and Penalties**

When the PHA determines that the owner has committed program abuse, the PHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any PHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

#### **14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

#### **Repayment to the PHA**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV GB. 22-12].

#### **PHA Reimbursement to Family or Owner**

The PHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserves [HCV GB p. 22-12].

#### **Prohibited Activities**

##### PHA Policy

Any of the following will be considered evidence of program abuse by PHA staff:

Failing to comply with any HCV program requirements for personal gain

Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the PHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program



## 14-II.E. CRIMINAL PROSECUTION

### PHA Policy

When the PHA determines that program abuse by an owner, family, or PHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the PHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

#### **14-II.F . FRAUD AND PROGRAM ABUSE RECOVERIES**

The PHA may retain a portion of program fraud losses that the PHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The PHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the PHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the PHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the PHA related to the collection, these costs must be deducted from the amount retained by the PHA.

## Chapter 15

### SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

#### INTRODUCTION

The PHA may permit a family to use any of the special housing types discussed in this chapter. However, the PHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The PHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

#### LHA Policy

Families will be permitted to use the homeownership option and manufactured home.

Families will not be permitted to use any other special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership



## **PART I: SINGLE ROOM OCCUPANCY**

[24 CFR 982.602 through 982.605]

### **15-1.A. OVERVIEW**

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **15-1.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the PHA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-1.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609]

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.



## **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the PHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the PHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

## **15-II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

## **PART III: GROUP HOME**

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

### **15-III.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the PHA, a live-in aide may live in the group home with a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

### **15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on the PHA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the PHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### 15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

## **PART IV: SHARED HOUSING**

[24 CFR 982.615 through 982.618]

### **15-IV.A. OVERVIEW**

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### **15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the PHA should consider whether sanitary and food preparation areas are private or shared.

### **15-IV.C. HOUSING QUALITY STANDARDS**

The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

## **PART V: COOPERATIVE HOUSING**

[24 CFR 982.619]

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-V.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.





## **PART VI: MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624]

### **15-VI.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

### **15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

## **15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

### **Payment Standards**

The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The PHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

### **Utility Allowance**

The PHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

### **Space Rent**

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

### **Housing Assistance Payment**

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

### **Rent Reasonableness**

Initially, and annually thereafter the PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

## **15-VI.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

### ***Manufactured Home Tie-Down***

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.



## **PART VII: HOMEOWNERSHIP**

[24 CFR 982.625 through 982.643]

### **15-VII.A. OVERVIEW [24 CFR 982.625]**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

#### PHA Policy

The PHA has instituted a minimum homeowner down payment requirement of at least three percent of the purchase price, and requires that at least one percent of the purchase price come from the family's personal resources.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a PHA offers both forms of assistance, a family must choose which form of assistance to receive.

#### PHA Policy

The PHA will offer the monthly homeownership assistance payments to qualified families.

The PHA must offer either form of homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

## **15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]**

The family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the PHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

### PHA Policy

The PHA will not establish a higher minimum income standard for disabled and/or non-disabled families.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.

### PHA Policy

Families will be considered “continuously employed” if the break in employment does not exceed four months.

The PHA will count self-employment in a business when determining whether the family meets the employment requirement.

- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the PHA must grant an exemption from the employment requirement if the PHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option

- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

PHA Policy

The PHA will impose additional eligibility requirements. To be eligible to participate in the homeownership option, families must meet the following criteria:

The family has had no family-caused violations of HUD's Housing Quality standards within the past 24 months.

The family is not within the initial one-year period of a HAP Contract.

The family does not owe money to the PHA.

The family has not committed any serious or repeated violations of a PHA-assisted lease within the past year.

### **15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Unless otherwise provided (under the homeownership option), the PHA may limit homeownership assistance to families or purposes defined by the PHA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

If the PHA limits the number of families that may participate in the homeownership option, the PHA must establish a system by which to select families to participate.

#### PHA Policy

The PHA will administer up to 5 new homeownership units per year. The PHA may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, the PHA may reduce the number of homeownership units offered in subsequent years.

Families who have been participating in an economic self-sufficiency program for at least six months, or have graduated from such a program, will be given preference over other families. Elderly and disabled families will automatically be given this preference.

Within preference and non-preference categories, families will be selected according to the date and time their application for participation in the homeownership option is submitted to the PHA.

All families must meet eligibility requirements as defined in Section 15-VII.B. of this plan.



## **15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

In order for a unit to be eligible, the PHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the PHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For PHA-owned units all of the following conditions must be satisfied:
  - The PHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;
  - The unit is not ineligible housing;
  - The PHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

The PHA must not approve the unit if the PHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

## **15-VI.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]**

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The PHA may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

### PHA Policy

The family will be allowed 120 days to identify a unit and submit a sales contract to the PHA for review. The family will be allowed an additional 120 days to close on the home. PHAs may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 125 days. The maximum amount of time a family will be given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any active lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to the PHA prior to the expiration of the period for which the extension is being requested. The PHA will approve or disapprove the extension request within 10 business days. The family will be notified of the PHA's decision in writing.

The family will be required to report their progress on locating and purchasing a home to the PHA every 30 days until the home is purchased.

If the family cannot complete the purchase of a unit within the maximum required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be issued a voucher to lease a unit.

## **15-VILF. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the PHA. HUD suggests the following topics for the PHA-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The PHA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The PHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the PHA offers a program of ongoing counseling for participants in the homeownership option, the PHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the PHA does not use a HUD-approved housing counseling agency to provide the counseling, the PHA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

### PHA Policy

If required by the PHA, families must attend and complete post-purchase ongoing homeownership counseling.

## **15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]**

### **Home Inspections**

The PHA may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until the PHA has inspected the unit and has determined that the unit passes HQS.

#### PHA Policy

When the family locates a home they wish to purchase and submits a copy of their purchase offer/contract, the PHA will conduct a housing quality standards (HQS) inspection within 10 business days. Any items found not to meet HQS must be repaired before the unit can be determined eligible for the homeownership program.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

#### PHA Policy

The family must hire an independent professional inspector, whose report must be submitted to the PHA for review. This inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector may not be a PHA employee.

The PHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

#### PHA Policy

The PHA will review the professional report in a timely fashion and, based on the presence of major physical problems, may disapprove the purchase of the home.

If the PHA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

While the family is receiving homeownership assistance, the PHA will conduct an HQS inspection every other year.

### **Contract of Sale**

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

### **Disapproval of a Seller**

In its administrative discretion, the PHA may deny approval of a seller for the same reasons a PHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

## **15-VII.H. FINANCING [24 CFR 982.632]**

The PHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The PHA must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

### PHA Policy

As a check against predatory lending, the PHA will review the financing of each purchase transaction, including estimated closing costs. The PHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The PHA also will not approve "seller financing" or "owner-held" mortgages. Beyond these basic criteria, the PHA will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least 3% of the sales price with 1% of the down payment coming from the purchaser's personal funds. The PHA will not require that the family have any more than the minimum of 1% of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

The PHA will approve a family's request to utilize its Family Self-Sufficiency escrow account for down payment and/or closing costs when purchasing a unit under the HCV homeownership option.

## **15-VIII. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the PHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the PHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the PHA before moving out of the home.
- The family must notify the PHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

### PHA Policy

Any inspection the PHA conducts after the initial inspection will be done on an advisory basis. The family will be encouraged to make the repairs, but will not be required to do so as a condition of ongoing assistance.

#### **15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.



#### **15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]**

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the PHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher program. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The PHA may pay the homeownership assistance payments directly to the family, or at the PHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

##### PHA Policy

The PHA's housing assistance payment will be paid directly to the family. It will be the family's responsibility to make the entire payment to the lender. The PHA may make an exception if the family requests the payment to go directly to the lender, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

##### PHA Policy

In order for the PHA to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following the PHA's last housing assistance payment on behalf of the family, the family must submit a request to the PHA at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. The PHA will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will the PHA postpone termination beyond an additional 90 days.

The PHA must adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by the PHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The PHA allowance for maintenance expenses;
- The PHA allowance for costs of major repairs and replacements;
- The PHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The PHA allowance for maintenance expenses;
- The PHA allowance for costs of major repairs and replacements;
- The PHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the PHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.

- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

PHA Policy

The PHA will allow the following homeownership expenses:

**Monthly homeownership payment.** This includes principal and interest on initial mortgage debt, taxes and insurance, and any mortgage insurance premium, if applicable.

**Utility allowance.** The PHA’s utility allowance for the unit, based on the current HCV utility allowance schedule.

**Monthly maintenance allowance.** The monthly maintenance allowance will be the annual maintenance allowance, divided by twelve. The annual maintenance allowance will be set at .5 percent of purchase price of the home.

**Monthly major repair/replacement allowance.** The monthly major repair/replacement allowance will be the annual major repair/replacement allowance divided by 12. The annual major repair/replacement allowance will be set as a percentage of the purchase price of the home, based on the age of the home at the time of purchase and/or reexamination.

<b>Age of Home</b>	<b>% of purchase price allowed</b>
New to 20 years	.5
21 to 30 years	1.0
31 to 40 years	1.5
41 to 50 years	2.0
51 years plus	2.5

**Monthly co-op/condominium assessments.** If applicable, the monthly amount of co-op or condominium association operation and maintenance assessments.

**Monthly principal and interest on debt for improvements.** Principal and interest for major home repair, replacements, or improvements, if applicable.

## **15-VIII. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]**

Subject to the restrictions on portability included in HUD regulations and PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

## **15-VIIM. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

The PHA may deny permission to move to a new unit with continued voucher assistance:

- If the PHA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance. In this case, the PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves based on insufficient funding.
- In accordance with the PHA's policy regarding number of moves within a 12-month period.

The PHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

### PHA Policy

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with PHA policies in Chapter 10.

The PHA will not require additional counseling of any families who move with continued assistance.

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic

violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.



## **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

### PHA Policy

Expenditures from the UNP account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of the PHA’s Board of Commissioners.





## PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

### 16-II.A. OVERVIEW

Although many of the program’s requirements are established centrally by HUD, the HCV program’s regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family’s payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

#### PHA Policy

Copies of the payment standard and utility allowance schedules are available for review in the PHA’s offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The PHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

### 16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA’s jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

## Updating Payment Standards

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high 24 CFR 982.503(g)].

### PHA Policy

The PHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the PHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** The PHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The PHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the PHA will consider increasing the payment standard. In evaluating rent burdens, the PHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** The PHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** The PHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** The PHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** The PHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on December 1<sup>st</sup> of every year unless, based on the proposed FMRs, it appears that one or more of the PHA's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, the PHAs payment standards will be effective October 1<sup>st</sup> instead of December 1<sup>st</sup>.

If the PHA has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is October 1<sup>st</sup>, the PHA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the PHA at the time the reexamination was originally processed.

### **Exception Payment Standards [982.503(c)]**

The PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

If a higher payment standard is needed as a reasonable accommodation, the Lakeland Housing Authority shall submit the following to HUD:

- A. Note whether the family is an applicant or participant family.
- B. The number of household members including a live-in aide/s.
- C. The voucher size the family is issued under the PHA's subsidy standards or any exception to those standards granted through a reasonable accommodation request; e.g., as a reasonable accommodation, a single-person family may be issued a two-bedroom voucher due to a need to store medical equipment.
- D. The FMR for the voucher size or unit size, whichever is smaller.
- E. When either the disability or the need for the requested accommodation is not known or readily apparent, a statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit (which may include its location) which meet that person's needs.
- F. The contract rent and utility allowance for the unit.
- G. A statement from the PHA that it has determined the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider where such a statement is necessary (see E. above).

H. The household's monthly adjusted income.

I. Proposed effective date of the new lease or actual effective date of the lease renewal.

If a higher payment standard is needed as a reasonable accommodation, the Lakeland Housing Authority shall submit the following to HUD:

A. A statement from a health care provider regarding the nature of the disabled person's disability/disabilities and the features of the unit (which may include its location) which meet that person's needs.

B. The contract rent and utility allowance for the unit.

C. A statement from the agency that it has determined the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider.

D. The household's monthly adjusted income.

E. The FMR for the unit size for which the family is eligible.

F. Proposed effective date of the new lease or actual effective date of the lease renewal.

#### Area Exception Rents

In order to help families find housing outside areas of high poverty or when housing choice voucher holders are having trouble finding housing for lease under the program, the Housing Authority may request that HUD approve an exception payment standard rent for certain areas

within its jurisdiction. The areas may be of any size, though generally not smaller than a census tract. The Housing Authority may request one such exception payment standard area or many. Exception payment standard rent authority may be requested for all or some unit sizes, or for all or some unit types. The exception payment standard area(s) may not contain more than 50% of the population of the FMR area.

When an exception payment standard rent has been approved and the FMR increases, the exception rent remains unchanged until such time as the Housing Authority requests and HUD approves a higher exception payment standard rent. If the FMR decreases, the exception payment standard rent authority automatically expires.

#### **Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

#### PHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the PHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

If success levels are projected to be extremely high and rents are projected to be at or below 30% of income, the Housing Authority will reduce the payment standard. Payment standards for each bedroom size are evaluated separately so that the payment standard for one bedroom size may increase or decrease while another remains unchanged. The Lakeland Housing Authority may consider adjusting payment standards at times other than the annual review when circumstances warrant.

Before increasing any payment standard, the Housing Authority will conduct a financial feasibility test to ensure that in using the higher standard, adequate funds will continue to be available to assist families in the program.

### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

## **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

### **Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

#### PHA Policy

The PHA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the PHA will apply this allowance to a family's rent and subsidy calculations.

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).



### **Utility Allowance Revisions**

The PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.



## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

#### **Decisions Subject to Informal Review**

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the HQS

- A PHA determination that the unit is not in accordance with the HQS due to family size or composition

### PHA Policy

The PHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the PHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

#### **Scheduling an Informal Review**

### PHA Policy

A request for an informal review must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's denial of assistance.

The PHA must schedule and send written notice of the informal review within 10 business days of the family's request.

#### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

## **Informal Review Decision [24 CFR 982.554(b)]**

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

### PHA Policy

In rendering a decision, the PHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. The PHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the PHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the PHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule
- A determination of the family unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

PHA Policy

The PHA will only offer participants the opportunity for an informal hearing when required to by the regulations.



## **Informal Hearing Procedures**

### ***Notice to the Family [24 CFR 982.555(c)]***

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

#### PHA Policy

In cases where the PHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of the PHA.

A brief statement of the reasons for the decision, including the regulatory reference.

The date the proposed action will take place.

A statement of the family's right to an explanation of the basis for the PHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of the PHA's hearing procedures.

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### PHA Policy

A request for an informal hearing must be made in writing and delivered to the PHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the PHA's decision or notice to terminate assistance.

The PHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the PHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the PHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The PHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

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

For the purpose of informal hearings, *documents* include records and regulations.

PHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

The PHA must be given an opportunity to examine at the PHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the PHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

### ***Attendance at the Informal Hearing***

#### PHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A PHA representative(s) and any witnesses for the PHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by the PHA as a reasonable accommodation for a person with a disability

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### PHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

The PHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### PHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the PHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the PHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

### ***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

#### PHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the PHA and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the PHA's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of the PHA will be overturned.

The hearing officer will issue a written decision to the family and the PHA no later than 10 business days after the hearing. The report will contain the following information:

**Hearing information:**

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the PHA representative; and

Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the PHA's decision.

**Order:** The hearing report will include a statement of whether the PHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the PHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the PHA to restore the participant's program status.



### ***Procedures for Rehearing or Further Hearing***

#### PHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the PHA will take effect and another hearing will not be granted.

#### ***PHA Notice of Final Decision [24 CFR 982.555(f)]***

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state, or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

#### PHA Policy

The PHA will mail a "Notice of Final Decision" including the hearing officer's report to the participant and their representative. This notice will be sent by first-class mail, postage pre-paid, with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof of mailing will be maintained in the PHA's file.

#### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

#### PHA Policy

The PHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the PHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

#### PHA Policy

The PHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

#### ***Informal Hearing Officer***

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### PHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or the PHA, as may be agreed upon by the two parties.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

#### PHA Policy

The PHA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

### **Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## REPETITIVE

### 16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

#### PHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the PHA holds the owner or participant liable to return any overpayments to the PHA.

The PHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to the PHA, the PHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies

- Small claims court

- Civil law suit

- State income tax set-off program

## **16-IV.B. REPAYMENT POLICY**

### **Owner Debts to the PHA**

#### PHA Policy

Any amount due to the PHA by an owner must be repaid by the owner within 30 days of the PHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the PHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the PHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the PHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will ban the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to the PHA**

#### PHA Policy

Any amount owed to the PHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

### **General Repayment Agreement Guidelines for Families**

#### ***Down Payment Requirement***

#### PHA Policy

The maximum length of time the LHA will enter into a payment agreement with a family is 12 months.

Prior to enter into a repayment agreement, a downpayment of 25-50% will be required. The minimum amount of monthly payment for any payment agreement is \$25.00.



### ***Execution of the Agreement***

#### PHA Policy

Any repayment agreement between the PHA and a family must be signed and dated by the PHA and by the head of household and spouse/cohead (if applicable).

### ***Due Dates***

#### PHA Policy

All payments are due by the close of business on the 15<sup>th</sup> day of the month. If the 15<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 15<sup>th</sup>.

### ***Late or Missed Payments***

#### PHA Policy

A payment will be considered to be in arrears if:

The payment has not been received by the close of the business day on which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day. If the family's payment agreement is in arrears, and the family has not contacted or made arrangements with the LHA, the LHA will:

Require the family to pay the balance in full

Pursue civil collection of the balance due

Terminate the housing assistance

Grant an extension of thirty (30) days

### ***No Offer of Repayment Agreement***

#### PHA Policy

There are some circumstances in which the LHA will not enter into a payment agreement.

- A. If the family already has a Repayment Agreement in place.
- B. If the LHA determines that the family committed program fraud.
- C. If the LHA determines that the debt amount is larger than can be paid back by the family in a reasonable amount of time.

### **Repayment Agreements Involving Improper Payments**

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act

- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

## **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA’s SEMAP certification, HUD will rate the PHA’s performance under each SEMAP indicator in accordance with program requirements.

### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

**16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b></p> <p><b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA’s written policies, according to the PHA’s quality control sample.</li></ul>
<p><b>Indicator 2: Rent reasonableness</b></p> <p><b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA’s quality control sample.</li></ul>
<p><b>Indicator 3: Determination of adjusted income</b></p> <p><b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li><li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA’s quality control sample.</li></ul>
<p><b>Indicator 4: Utility allowance schedule</b></p> <p><b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li></ul>

- Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.

**Indicator 5: HQS quality control inspections****Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.

**Indicator 6: HQS enforcement****Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

**Indicator 7: Expanding housing opportunities****Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

**Indicator 8: FMR limit and payment standards****Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

**Indicator 9: Annual reexaminations****Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least



every 12 months.

- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations**

**Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections**

**Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections**

**Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up**

**Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year, or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**

**Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders****Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

**Deconcentration Bonus Indicator****Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

## 16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### PHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.

PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

### PHA Policy

Prior to utilizing HUD's EIV system, the PHA will adopt and implement EIV security procedures required by HUD.

## **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

## **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

## **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-IX.E.



**PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD  
LEAD LEVEL**

**16-VII.A. OVERVIEW**

The PHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

**16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

The PHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

PHA Policy

The PHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

**16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the PHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

PHA Policy



The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the PHA is not providing such a report.



## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### PHA Policy

The PHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the PHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the PHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the PHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the PHA will be considered to have insufficient funding.



## PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

### 16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12-II.F, “Termination Notice.”

### 16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

## 16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

### Notification to Public

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

#### PHA Policy

The PHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, *sexual assault*, and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that the PHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

A statement of the PHA's obligation to keep confidential any information that it receives from a victim unless (a) the PHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

#### PHA Policy

The PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The PHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The PHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, and Stalking.

### **Notification to Owners and Managers [24 CFR 5.2005(a)(2)]**

PHAs are required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

#### PHA Policy

The PHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.



#### **16-IX.D. DOCUMENTATION [24 CFR 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

#### PHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The PHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by the PHA will be in writing.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### PHA Policy

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, the PHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

#### PHA Policy

If the PHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, the PHA will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

### **16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to the PHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual,

except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the PHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND PARTICIPANTS REGARDING THE  
VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, or stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

**Protections for Victims**

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault, or stalking.

If you are the victim of domestic violence, dating violence, sexual assault, or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a member of your household or a guest can’t be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

**Reasons You Can Be Evicted**

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to participants who are not victims.

**Removing the Abuser from the Household**

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser’s Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

**Moving to Protect Your Safety**

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the

housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

## **Proving That You Are a Victim of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, sexual assault, or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser’s relationship to you, the date, time, and location of the incident of violence, and a description of the violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, mental health professional, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”
- Provide a police or court record, such as a protective order, or an administrative record.

Additionally, at its discretion, the housing authority can accept a statement or other evidence provided by the applicant or participant.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

### **Confidentiality**

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

### **VAWA and Other Laws**

VAWA does not limit the housing authority’s or your landlord’s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

## For Additional Information

If you have any questions regarding VAWA, please contact \_\_\_\_\_ at \_\_\_\_\_.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

## Definitions

For purposes of determining whether a participant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.





**EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE  
VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

**Protections for Victims**

You cannot refuse to rent to an applicant solely because he or she is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

You cannot evict a tenant who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault, or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

**Permissible Evictions**

You can evict a victim of domestic violence, dating violence, sexual assault, or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault, or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than you hold tenants who are not victims.

**Removing the Abuser from the Household**

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

## **Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority or online at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/forms/hud5](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud5).
- A statement from a victim service provider, attorney, mental health professional, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.
- A police or court record, such as a protective order, or administrative record.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

## **Confidentiality**

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault, or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

## **VAWA and Other Laws**

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking.

## **Additional Information**

- If you have any questions regarding VAWA, please contact \_\_\_\_\_.

## Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *sexual assault* as "any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent" (42 U.S.C. 13925(a)).

VAWA defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.



## **PART I: GENERAL REQUIREMENTS**

### **17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]**

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### PHA Policy

The PHA will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the PHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project basing [24 CFR 983.6; FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]**

The PHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap. Units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.



- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

PHA Policy

The PHA may set aside units above the 20 percent program limit if necessary.

## **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17.

### PHA Policy

The PHA may project-base any units not subject to the 20 percent cap if necessary.

## **17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

### PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

### **17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

### **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

## **PART II: PBV OWNER PROPOSALS**

### **17-II.A. OVERVIEW**

The PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]**

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- PHA request for PBV Proposals. The PHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The PHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The PHA need not conduct another competition.

## **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

### PHA Policy

#### PHA Request for Proposals for Rehabilitated and Newly Constructed Units

The PHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

#### The Ledger

In addition, the PHA will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The PHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Proposals will be due in the PHA office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the PHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The PHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the PHA will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

### PHA Requests for Proposals for Existing Housing Units

The PHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

#### The Ledger

In addition, the PHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The PHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the PHA estimates that it will be able to assist under the funding the PHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Extent to which units are occupied by families that are eligible to participate in the PBV program.

PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The PHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

The PHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

The Ledger

In addition to, or in place of advertising, the PHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The PHA will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities; and

Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.



### **PHA-Owned Units [24 CFR 983.51(e), 983.59, and Notice PIH 2015-05]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

#### PHA Policy

The PHA may submit a proposal for project-based housing that is owned or controlled by the PHA. If the proposal for PHA-owned housing is selected, the PHA will use (to be determined) to review the PHA selection and to administer the PBV program. The PHA will obtain HUD approval of

**(to be determined)** prior to selecting the proposal for PHA-owned housing.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

### **PHA Notice of Owner Selection [24 CFR 983.51(d)]**

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

#### PHA Policy

Within 10 business days of the PHA making the selection, the PHA will notify the selected owner in writing of the owner's selection for the PBV program. The PHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the PHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the PHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The PHA will also post the notice of owner selection on its electronic web site.

The PHA will make available to any interested party its rating and ranking sheets and documents that identify the PHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The PHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The PHA will make these documents available for review at the PHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

### **17-II.C. HOUSING TYPE [24 CFR 983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly

constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

## **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

### **Ineligible Housing Types [24 CFR 983.53]**

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

### **Subsidized Housing [24 CFR 983.54]**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

## **17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14]**

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

The PHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, the PHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

## **17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

### **25 Percent per Project Cap [24 CFR 983.56]**

In general, the PHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

### **Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b)]**

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily project because they are specifically made available for elderly and/or disabled families or families receiving supportive services (also known as *qualifying families*).

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

#### PHA Policy

The PHA will not require families living in excepted units to receive supportive services. Therefore, excepted units will be limited to units in single-family buildings and those made available for elderly or disabled families.

### **Promoting Partially-Assisted Projects [24 CFR 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-

family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-project cap of less than 25 percent.

PHA Policy:

The PHA will not provide assistance for excepted units. Beyond that, the PHA will not impose any further cap on the number of PBV units assisted per project.

## **17-II.G. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]**

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

#### PHA Policy

It is the PHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the PHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the PHA will grant exceptions to the 20 percent standard where the PHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;



A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## **17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The PHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## **PART III: DWELLING UNITS**

### **17-III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

#### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

## **17-III.D. INSPECTING UNITS**

### **Pre-selection Inspection [24 CFR 983.103(a)]**

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS.

### **Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### **Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, the PHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

#### PHA Policy

The PHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

**Other Inspections [24 CFR 983.103(e)]**

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.





## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17-IV.A. OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

### **17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The PHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

### **Content of the Agreement [24 CFR 983.152(d)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

### **Execution of the Agreement [24 CFR 983.153]**

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the PHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the PHA may not enter into the Agreement until the environmental review is completed and the PHA has received environmental approval. However, the PHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

#### PHA Policy

The PHA will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

## **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

### **Equal Opportunity [24 CFR 983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

### **Owner Disclosure [24 CFR 983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

## **17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

#### PHA Policy

The PHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The PHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

### **PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

The PHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

### **Execution of the HAP Contract [24 CFR 983.204]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

#### PHA Policy

For existing housing, the HAP contract will be executed within 10 business days of the PHA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the PHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

### **Term of HAP Contract [24 CFR 983.205]**

The PHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

#### PHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the PHA may extend the term of the contract for an additional term of up to 15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 15 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the PHA

agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

## PHA Policy

When determining whether or not to extend an expiring PBV contract, the PHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner's record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

### ***Termination by PHA [24 CFR 983.205(c)]***

The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

### ***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.



**Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the PHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

**Remedies for HQS Violations [24 CFR 983.208(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

PHA Policy

The PHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 CFR 983.207(a)]**

At the PHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

### **Addition of Contract Units [24 CFR 983.207(b)]**

At the PHA's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per project and on the overall size of the PHA's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same project. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

#### PHA Policy

The PHA will consider adding contract units to the HAP contract when the PHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

### **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on

different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

## **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

## **17-V.F. ADDITIONAL HAP REQUIREMENTS**

### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

#### PHA Policy

The PHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The PHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

### **Vacancy Payments [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

#### PHA Policy

The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.



## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

The PHA may select families for the PBV program from those who are participants in the PHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### PHA Policy

The PHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

**In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an “in-place family.” These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA’s waiting list. Once the family’s continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.



## **17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

### PHA Policy

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

## **17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units. The PHA may place families referred by the PBV owner on its PBV waiting list.

### **Income Targeting [24 CFR 983.251(c)(6)]**

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

The PHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

Although the PHA is prohibited from granting preferences to persons with a specific disability, the PHA may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the PHA has projects with more than 25 percent of the units receiving project-based assistance because those projects include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), the PHA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

#### PHA Policy

The preferences utilized shall be the same as is used for the Tenant Based Housing Choice Voucher Program.

The PHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units). The PHA will not offer any additional preferences for the PBV program or for particular PBV projects or units.

## **17-VLE. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

#### ***Persons with Limited English Proficiency***

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### PHA Policy

The owner must notify the PHA in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The PHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

### **Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

#### PHA Policy

If any contract units have been vacant for 120 days, the PHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that

have been vacant for this period. The PHA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of the PHA's notice.

## **17-VL.G. TENANT SCREENING [24 CFR 983.255]**

### **PHA Responsibility**

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

#### PHA Policy

LHA will provide criminal background information to landlords for a fee, the same as in the HCV program.

The PHA must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

#### PHA Policy

LHA will provide screening information for a fee, the same as in the HCV program.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;

- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.





## **PART VII: OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17-VII.B. LEASE [24 CFR 983.256]**

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### **Form of Lease [24 CFR 983.256(b)]**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

#### PHA Policy

The PHA will not review the owner's lease for compliance with state or local law.

#### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;

- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

### **Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

### ***Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]***

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

### **PHA Policy**

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

## **Security Deposits [24 CFR 983.259]**

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

### PHA Policy

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## **17-VII.C. MOVES**

### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]**

If the PHA determines that a family is occupying a wrong size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

#### PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

PBV assistance in the same building or project;

PBV assistance in another project; and

Tenant-based voucher assistance.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

#### PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time

frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.



**Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA. If the family wishes to move with continued tenant-based assistance, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the PHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

## **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

The PHA may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly and/or disabled families; or
- Specifically made available for families receiving supportive services as defined by the PHA. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the PHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (e.g. a family that does not successfully complete its FSS contract of participation or supportive services requirements, or a family that is no longer elderly or disabled due to a change in family composition where the PHA does not exercise discretion to allow the family to remain in the excepted unit), must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long-term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

### PHA Policy

The PHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, when the PHA determines that a family no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception, the PHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

The PHA may refer other eligible families to the excepted units. However, if there are no eligible families on the waiting list and the owner does not refer eligible families to the PHA, the PHA will amend the HAP contract to reduce the total number of units under contract.

## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

## ***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

### **PHA Policy**

The PHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the PHA will use the higher initial rent to owner amount.

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the PHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

#### PHA Policy

Upon written request by the owner, the PHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The PHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the PHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the PHA determines it is necessary due to PHA budgetary constraints.

## **Redetermination of Rent [24 CFR 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

#### PHA Policy

An owner's request for a rent increase must be submitted to the PHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent. The PHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.



## PHA Policy

The PHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **PHA-Owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

## **17-VIII.C. REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### **When Rent Reasonable Determinations Are Required**

The PHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

### ***Comparability Analysis***

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

**PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

#### **Other Subsidy [24 CFR 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

#### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

#### **Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

## **PART IX: PAYMENTS TO OWNER**

### **17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

#### PHA Policy

If the PHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the PHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

#### PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

### **17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

#### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

#### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

#### PHA Policy

The PHA will make utility reimbursements to the family.



## **17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### **Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## 2019-Significant changes made to the Administrative Plan for the Lakeland Housing Authority

1. Updated info for Administrative Guidance for Effective and Mandated Use of the EIV System
2. Updated PIH notice number 2010-19 for updated PIH notice 2017-12
3. Revised subsidy standards to add additional bedroom per head of the household, spouse and/or partner and two heartbeats per additional bedrooms
4. Updated preference points for veterans, and family unification program

# PHA Public Housing **ACOP** (Admissions & Continued Occupancy Policy) 2019

Approved by the HA Board of Commissioners: 09/17/2018

Submitted to HUD: 10/18/2018

# ADMISSIONS AND CONTINUED OCCUPANCY POLICY FOR THE PUBLIC HOUSING PROGRAM

Approved by the LHA Board of Commissioners:

Approved by HUD:

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## **Chapter 1 OVERVIEW OF THE PROGRAM AND PLAN INTRODUCTION**

The Housing Authority of City of Lakeland (LHA) receives its operating subsidy for the public housing program from the Department of Housing and Urban Development. LHA is not a federal department or agency. LHA is a public housing agency (PHA) and is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. LHA enters into an Annual Contributions Contract with HUD to administer the public housing program. LHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the LHA and its programs with emphasis on the public housing program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

Part I: LHA. This part includes a description of the LHA, its jurisdiction, its programs, and its mission and intent.

Part II: The Public Housing Program. This part contains information about public housing operation, roles and responsibilities, and partnerships.

Part III: The Admissions and Continued Occupancy (ACOP). This part discusses the purpose and organization of the plan and its revision requirements.

### **PART I: LHA**

#### **1-I.A. OVERVIEW**

This part describes the LHA's creation and authorization, the general structure of the organization, and the relationship between the LHA Board and staff.

#### **1-I.B. ORGANIZATION AND STRUCTURE OF LHA**

Public housing is funded by the federal government and administered by the Housing Authority of City of Lakeland (LHA) for the jurisdiction of City of Lakeland, Florida.

The officers of LHA are known as commissioners or, collectively, as the Board of Commissioners (Board). The Board consists of the six City of Lakeland selected Board of Commissioners and one Board-appointed LHA Resident Commissioner. The Board generally serves in the same capacity as the directors of a corporation, establishing policies under which LHA conducts business, ensuring that policies are followed by LHA staff and ensuring that LHA is successful in its mission. The Board is responsible for preserving and expanding LHA's resources and assuring LHA's continued viability.

Formal actions of LHA are taken through written resolutions, adopted by the Board and entered into the official public records of LHA and the County.

The chief administrative officer of LHA is the executive director (ED). The ED is directly responsible for all aspects of the management of LHA and for carrying out the policies established by the Board. The ED is delegated the responsibility for hiring, training and supervising LHA's staff in order to manage the day-to-day operations and to ensure compliance with federal and state laws and directives for the programs managed. In addition, the ED's duties include budgeting and financial planning for the agency and coordinating LHA's efforts with the plans and programs of other local, regional, state and federal agencies, as well as the public or private agencies or organizations that may be of assistance to LHA or that LHA may assist.

#### **1-I.C. LHA MISSION**

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

##### LHA Policy

LHA's mission is to provide affordable, safe, decent and sanitary housing opportunities in a fiscally responsible manner to low-income people in the City of Lakeland.

### **1-I.D. LHA'S COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, LHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, LHA resolves to:

Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.

Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for very low-and low-income families.

Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward de-concentration of poverty goals.

Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service's needs.

Promote fair housing and the opportunity for very low-and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.

Create positive public awareness and expand the level of family and community support in accomplishing LHA's mission.

Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.

Administer an efficient, high-performing agency through continuous improvement of LHA's support systems and commitment to our employees and their development.

LHA will make every effort to keep residents informed of program rules and regulations, and to advise participants of how the program rules affect them.

### **1-I.E. Code of Conduct**

1. Pursuant to the requirement of 24CFR84.42, Codes of Conduct, and 24CFR85.36, Procurement standards, no employee, officer or agent of the Housing Authority shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his immediate family, his or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the entity selected for award.

2. Without the prior approval of the Executive Director, employees are prohibited from:

(a) Processing an application (or any part of an application) or any recertification for a relative, friend, co-worker, or business associate or on behalf of a relative or business associate of a co-worker;

(b) Serving as third party verification or as a reference for anyone applying or being recertified for housing assistance with LHA;

(c) Participating in an assisted housing program administered by LHA, either as a tenant or as a landlord; (d)

Entering into contracts or agreements in connection with the tenant-based programs in which any of the classes of persons outlined under 24CFR982.161, Conflict of Interest, has any interest, direct or indirect. Prior HUD approval is required if it is necessary to enter into such a contract or agreement.

(e) Inspecting units associated with the tenant-based programs if the employee has any direct or indirect interest.

3. Pursuant to 24CFR84.42, Codes of Conduct, The Housing Authority's officers, employees or agents will neither solicit nor accept gifts, gratuities, favors or anything of monetary value from parties to any agreement involving federal funds.

4. All employees shall follow the Ethical Standards Governing Employee Conduct defined in the Housing Authority's Personnel Policy, Section XIV.

5. Employees found to be in violation of any of the Code of Conduct Policy guidelines mentioned above will be disciplined according to the Housing Authority's Personnel Policy, Section XVI.

## **PART II: THE PUBLIC HOUSING PROGRAM**

### **1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM**

The intent of this section is to provide the public and staff an overview of the history and operation of public housing.

The United States Housing Act of 1937 (the “Act”) is responsible for the birth of federal housing program initiatives, known as public housing. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing for low-income residents. There have been many changes to the program since its inception in 1937.

The Housing Act of 1965 established the availability of federal assistance, administered through local public agencies, to provide rehabilitation grants for home repairs and rehabilitation. This act also created the federal Department of Housing and Urban Development (HUD).

The Housing Act of 1969 created an operating subsidy for the public housing program for the first time. Until that time, public housing was a self-sustaining program.

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act or Housing Act of 1998 – was signed into law. Its purpose was to provide more private sector management guidelines to the public housing program and provide residents with greater choices. It also allowed PHAs more remedies to replace or revitalize severely distressed public housing developments. Highlights of the Reform Act include: the establishment of flat rents; the requirement for PHAs to develop five-year and annual plans; income targeting, a requirement that 40% of all new admissions in public housing during any given fiscal year be reserved for extremely low-income families; and resident self-sufficiency incentives.

### **1-II.B. PUBLIC HOUSING PROGRAM BASICS**

HUD writes and publishes regulations in order to implement public housing laws enacted by Congress. HUD contracts with LHA to administer programs in accordance with HUD regulations and provides an operating subsidy to LHA. LHA must create written policies that are consistent with HUD regulations. Among these policies is LHA’s Admissions and Continued Occupancy Policy (ACOP). The ACOP must be approved by the board of commissioners of LHA.

The job of LHA pursuant to HUD regulations is to provide decent, safe, and sanitary housing, in good repair, to low-income families at an affordable rent. LHA screens applicants for public housing and, if they are found eligible and accepted, LHA offers the applicant a unit. If the applicant accepts the offer, LHA will enter into a contract with the applicant known as the lease. At this point, the applicant becomes a tenant of the public housing program.

In the context of the public housing program, a tenant is defined as the adult person(s) (other than a live-in aide who (1) executed the lease with LHA as lessee of the dwelling unit, or, if no such person now resides in the unit, (2) who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit. [24 CFR 966.53]. The Public Housing Occupancy Guidebook refers to tenants as “residents.” The terms “tenant” and “resident” are used interchangeably in this policy. Additionally, this policy uses the term “family” or “families” for residents or applicants, depending on context.

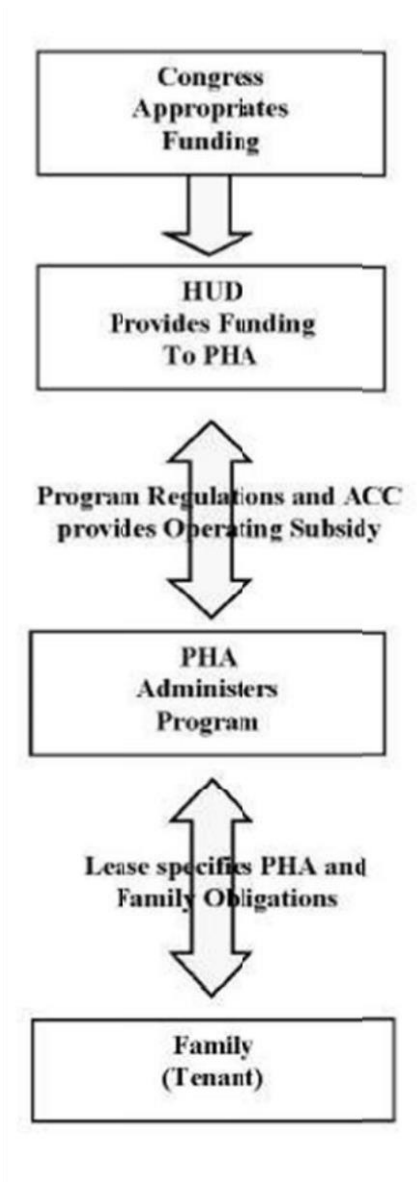
Since LHA owns the public housing development, LHA is the landlord. LHA must comply with all of the legal and management responsibilities of a landlord in addition to administering the program in accordance with HUD regulations, Florida Landlord Tenant Law and LHA policy. Note: Families and/or individuals living in a multifamily community where more than one housing program exist, such families must follow the most stringent rules and regulations.

### **1-II.C. PUBLIC HOUSING PARTNERSHIPS**

Relationships between the important parties are defined by federal regulations and by contract. To administer the public housing program, LHA enters into a contractual relationship with HUD through the Annual Contributions Contract (ACC). LHA also enters into a contractual relationship with the tenant through the public housing lease. These contracts outline the roles and responsibilities of each party.

Federal regulations further identify the important roles of the parties involved. For the program to work and be successful, all parties involved – HUD, LHA, and the tenant – must play their important parts. The chart on the following page illustrates key aspects of these relationships.

### The Public Housing Relationships



**What does HUD do?**

Federal law is the source of HUD responsibilities. HUD has the following major responsibilities:  
Develop regulations, requirements, handbooks, notices and other guidance to implement housing legislation passed by Congress  
Allocate operating subsidies to LHA  
Allocate capital funding to LHA  
Provide technical assistance to LHA on interpreting and applying program requirements  
Monitor LHA compliance with program requirements and LHA performance in program administration.

**What does LHA do?**

LHA's responsibilities originate in federal regulations and the ACC. LHA owns and manages public housing developments, administers the program under contract with HUD and has the following major responsibilities:  
Establish local policies  
Review applications from interested applicant families to determine whether applicants are eligible for the program  
Maintain waiting list and select families for admission  
Maintain housing units by making any necessary repairs in a timely manner  
Screen families who apply for tenancy, to determine if they will be eligible renters  
Offer units to families (minimize vacancies without overcrowding)  
Maintain properties to the standard of decent, safe, sanitary, and in good repair (including assuring compliance with uniform physical conditions standards)  
Make sure LHA has adequate financial resources to maintain its housing stock  
Ensure that families continue to qualify under the program  
Collect rent due from the assisted family and comply with and enforce provisions of the lease  
Ensure that families comply with program rules  
Provide families with prompt and professional service  
Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the ACC, HUD-approved applications for funding, LHA's ACOP, and other applicable federal, state and local laws.

**What does the Tenant do?**

The tenant's responsibilities are articulated in the public housing lease. The tenant has the following broad responsibilities:

Comply with the terms of the lease.  
Provide LHA with complete and accurate information, determined by LHA to be necessary for administration of the program.  
Cooperate in attending all appointments scheduled by LHA.  
Allow LHA to inspect the unit at reasonable times and after legal notice.  
Take responsibility for care of the housing unit, including any violations of uniform physical condition standards caused by the family.  
Not engage in drug-related, alcohol-related or violent or other criminal activity.  
Written 30 day notification to LHA before moving or termination of the lease.  
Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit or assign the lease.  
Notify LHA of any changes in family composition or income within ten (10) days of the change.  
Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.  
If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled in an effective manner.



#### **1-II.D. APPLICABLE REGULATIONS**

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 902: Public Housing Assessment System
- 24 CFR Part 903: Public Housing Agency Plans
- 24 CFR Part 945: Designated Housing
- 24 CFR Part 960: Admission and Occupancy Policies
- 24 CFR Part 965: PHA-Owned or Leased Projects – General Provisions
- 24 CFR Part 966: Lease and Grievance Procedures

### **PART III: THE ADMISSIONS AND CONTINUED OCCUPANCY POLICIES (ACOP)**

#### **1-III.A. OVERVIEW AND PURPOSE OF THE POLICY**

The ACOP is LHA’s written statement of policies used to carry out the housing program in accordance with federal law and regulations, and HUD requirements. The ACOP is required by HUD and it must be available for public review [CFR 24 Part 903]. The ACOP also contains policies that support the objectives contained in LHA’s Agency Plan.

All issues related to public housing not addressed in this ACOP are governed by federal regulations, HUD handbooks and guidebooks, notices and applicable state and local laws. The policies in this ACOP have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding. LHA is responsible for complying with all changes in HUD regulations pertaining to public housing. If such changes conflict with this plan, HUD regulations will have precedence.

#### **1-III.B. CONTENTS OF THE POLICY**

Unlike the housing choice voucher program, HUD regulations for public housing do not contain a list of what must be included in the ACOP. However, individual regulations contain requirements of inclusion in LHA’s written policy. At a minimum, the ACOP plan should cover LHA policies on these subjects:

The organization of the waiting list and how families are selected and offered available units, including any LHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening LHA waiting list (Chapters 4 and 5) Transfer policies and the circumstances under which a transfer would take precedence over an admission (Chapter 12) Standards for determining eligibility, suitability for tenancy, and the size and type of the unit needed (Chapters 3 and 5) Procedures for verifying the information the family has provided (Chapter 7) The method for achieving de-concentration of poverty and income-mixing of public housing developments (Chapter 4) Grievance procedures (Chapter 14) Policies concerning payment by a family to LHA of amounts the family owes LHA (Chapter 15 and 16) Interim redeterminations of family income and composition (Chapter 9) Policies regarding community service requirements; (Chapter 11) Policies and rules about safety and ownership of pets in public housing (Chapter 10).

#### **New Approach to Policy Development**

HUD has developed an approach to monitoring policy that emphasizes the importance of consistency. The ACOP supports that goal by clearly defining LHA policy for management and staff.

A primary focus of programs like HUD’s Rental Integrity Monitoring (RIM) program has been consistency in how PHAs conduct their business and in how HUD monitors PHA activities. HUD has made it clear that consistency in PHA conduct is important. Referring to and following the ACOP is essential to maintaining consistency in applying PHA policy.

HUD makes a distinction between:

Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

HUD expects LHA to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies LHA has adopted. LHA's Admissions and Continued Occupancy Policy is the document that contains and clarifies LHA policy. HUD's new direction adds additional emphasis to the need for a clearly written and comprehensive ACOP to guide staff in the clear and consistent application of policy.

HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. Therefore, following HUD guidance in the preparation of LHA policy, even though it is not mandatory, provides LHA with a "safe harbor." If LHA adopts its own optional policy, it must make its own determination that such policy is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than that suggested by HUD, but LHA should carefully think through those decisions and be able to articulate how their policy is consistent with federal laws, regulations and mandatory policy.

### **1-III.C. UPDATING AND REVISING THE POLICY**

LHA will revise this ACOP as needed to comply with changes in HUD regulations. The original policy and any changes must be approved by the board of commissioners of LHA, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

#### LHA Policy

LHA will review and update the ACOP at least once a year, and more often if needed, to reflect changes in regulations, LHA operations, or when needed to ensure staff consistency in operation.

## **Chapter 2 FAIR HOUSING AND EQUAL OPPORTUNITY**

### **INTRODUCTION**

This chapter explains the laws and HUD regulations requiring LHA to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of LHA's public housing operations.

This chapter describes HUD regulations and LHA policies related to these topics in three parts:

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of LHA regarding nondiscrimination.

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the public housing program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42.U.S.C.) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of LHA to ensure meaningful access to the public housing program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD's Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register* ("Notice of Guidance").

## **PART I: NONDISCRIMINATION**

### **2-I.A. OVERVIEW**

Federal laws require LHA to treat all applicants and tenant families equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, disability sexual orientation and gender identity. LHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Violence Against Women Act of 2005 (VAWA)
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted
- When more than one civil rights law applies to a situation, the laws will be read and applied together.

#### LHA Policy

LHA will apply any and all fair housing state laws and local city and county codes that apply including but not limited to: any Florida State or Polk County or the City of Lakeland.

### **2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes. State and local requirements, as well as LHA policies, can prohibit discrimination against additional classes of people.

LHA shall not discriminate because of race, color, sex, sexual orientation, gender identity, marital status, religion, familial status, age, disability, national origin, sexual orientation and gender identity (called “protected classes”). Familial status includes children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18.

#### LHA Policy

In addition to Federal protected classes, LHA will not discriminate on the basis of legal sources of income, sexual orientation, gender identity, domestic partnership, marital status, and age.

LHA will not use any of these factors to:

Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the public housing program

Provide housing that is different from that provided to others

Subject anyone to segregation or disparate treatment

Restrict anyone's access to any benefit enjoyed by others in connection with the housing program

Treat a person differently in determining eligibility or other requirements for admission

Steer an applicant or tenant toward or away from a particular area based on any of these factors

Deny anyone access to the same level of services

Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program

Discriminate in the provision of residential real estate transactions

Discriminate against someone because they are related to or associated with a member of a protected class

Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

### **Providing Information to Families**

LHA must take steps to ensure that families are fully aware of all applicable civil rights laws. As part of the public housing orientation process, LHA will provide information to public housing applicant families about civil rights requirements.

### **Discrimination Complaints**

If an applicant or tenant family believes that any family member has been discriminated against by LHA, the family should advise LHA. HUD requires LHA to make every reasonable attempt to determine whether the applicant's or tenant family's assertions have merit and take any warranted corrective action.

#### LHA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify LHA in writing. They may contact LHA in person, by email or through regular mail. Complaints should be submitted to the LHA Director of Housing Office, 430 Hartsell Avenue, Lakeland, Florida 33815 or emailed to [Lakelandhousing@lakelandhousing.org](mailto:Lakelandhousing@lakelandhousing.org)

LHA will attempt to remedy discrimination complaints made against LHA.

Complaints may be discussed informally. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the Tenant and one retained in the LHA's Tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint. If satisfactory resolution is not achieved within 30 calendar days of receiving the complaint, LHA will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

## **PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **2-II.A. OVERVIEW**

One type of disability discrimination prohibited by the Fair Housing Act is the refusal to make reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford a person with a disability the equal opportunity to use and enjoy a program or dwelling under the program. LHA must ensure that persons with disabilities have full access to LHA's programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the public housing program [24 CFR 8].

LHA must provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy [24 CFR 966.7(b)].

#### LHA Policy

Information of the availability of reasonable accommodation will be provided to all families at the time of application. LHA will also ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by LHA. LHA will keep an updated Reasonable Accommodation Procedure in place for staff to rely upon for uniformity in treatment.

### **2-II.B. DEFINITION OF REASONABLE ACCOMMODATION**

A "reasonable accommodation" is a change, exception, or adjustment to a policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since policies and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for LHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

### **Types of Reasonable Accommodations**

When it is reasonable (see definition above and Section 2-II.E), LHA shall accommodate the needs of a person with disabilities. Examples include but are not limited to:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Permitting a higher utility allowance for the unit if a person with disabilities requires the use of specialized equipment related to the disability
- Modifying or altering a unit or physical system if such a modification or alteration is necessary to provide equal access to a person with a disability
- Installing a ramp into a dwelling or building
- Installing grab bars in a bathroom
- Installing visual fire alarms for hearing impaired persons
- Allowing a LHA-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities, and would not be otherwise living in the unit.
- Providing a designated handicapped-accessible parking space
- Allowing an assistance animal
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with LHA staff
- Displaying posters and other housing information in locations throughout LHA's office in such a manner as to be easily readable from a wheelchair

### **2-II.C. REQUEST FOR AN ACCOMMODATION**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that LHA treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

The family must explain what type of accommodation is needed to provide the person with the disability full access to LHA's programs and services.

If the need for the accommodation is not readily apparent or known to LHA, the family must explain the relationship between the requested accommodation and the disability.

#### LHA Policy

LHA will encourage the family to make its request in writing using a reasonable accommodation request form. However, LHA will consider the accommodation any time the family indicates that an accommodation is needed whether or not a formal written request is submitted.

### **2-II.D. VERIFICATION OF DISABILITY**

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

Before providing an accommodation, LHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to LHA's programs and services. If a person's disability is obvious or otherwise known to LHA, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to LHA, LHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, LHA will follow the verification policies provided in Chapter 7.

All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16 (Program Administration). In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].
- LHA must request only information that is necessary to evaluate the disability-related need for the accommodation. LHA may not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

In the event that the PHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the PHA will dispose of it. In place of the information, the PHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

**2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26] LHA must approve a request for an accommodation if the following three conditions are met.

The request was made by or on behalf of a person with a disability.

There is a disability-related need for the accommodation.

The requested accommodation is reasonable, meaning it would not impose an undue financial and administrative burden on LHA, or fundamentally alter the nature of LHA's operations.

Requests for accommodations must be assessed on a case-by-case basis. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of LHA at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

Before making a determination whether to approve the request, LHA may enter into discussion and negotiation with the family, request more information from the family, or may require the family to sign a consent form so that LHA may verify the need for the requested accommodation.

#### LHA Policy

After a request for an accommodation is presented, LHA will respond, in writing, within 14 business days.

LHA will notify the family in writing if the request is approved.

If LHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal LHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

If LHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of LHA's operations), LHA will notify the family in writing of its decision. The notice will inform the family of the right to appeal LHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

If LHA denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of LHA's operations), but has determined there is an alternative accommodation that could effectively address the family's disability related need without a fundamental alteration to the public housing program without imposing an undue financial and administrative burden, LHA will notify the family in writing. The notification will inform the family of the right to appeal LHA's decision through an informal hearing (if applicable) or the grievance process (see Chapter 14).

## **2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

HUD regulations require LHA to take reasonable steps to ensure that persons with disabilities related to hearing and vision have reasonable access to LHA's programs and services [24 CFR 8.6].

At the initial point of contact with each applicant, LHA shall inform all applicants of alternative forms of communication that can be used other than plain language paperwork.

### LHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available through the Florida Relay System.

To meet the needs of persons with vision impairments, Braille, large-print, and audio versions of key program documents can be made available upon request. Since large print and audio presentation are a much more cost effective alternative accommodation, LHA reserves the right to charge direct fees for the cost of converting documents to Braille and must notify requestor of any fees that will be charged before acquiring the service to convert documents to Braille. .

When visual aids are used in public meetings or presentations, or in meetings with PHA staff, one-on-one assistance will be provided upon request.

Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

## **2-II.G. PHYSICAL ACCESSIBILITY**

LHA must comply with a variety of regulations pertaining to physical accessibility, including the following.  
Notice PIH 2010-26

Section 504 of the Rehabilitation Act of 1973

The Americans with Disabilities Act of 1990

The Architectural Barriers Act of 1968

The Fair Housing Act of 1988 LHA's policies concerning physical accessibility must be readily available to applicants and resident families. They can be found in three key documents.

This policy, the Admissions and Continued Occupancy Policy, describes the key policies that govern LHA's responsibilities with regard to physical accessibility.

Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the public housing offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.

LHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of LHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the public housing program.

## **2-II.H. DENIAL OR TERMINATION OF ASSISTANCE**

A LHA's decision to deny or terminate the assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation [24 CFR 966.7].

When applicants with disabilities are denied assistance, the notice of denial must inform them of their right to request an informal hearing [24 CFR 960.208(a)].

When a family receives a lease termination notice, LHA must inform the family of their right to request a hearing in accordance with LHA's grievance process [24 CFR 966.4(1)(3)(ii)].

When reviewing reasonable accommodation requests, LHA must consider whether reasonable accommodation will allow the family to overcome the problem that led to LHA's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, LHA must make the accommodation [24 CFR 966.7].

In addition, LHA must provide reasonable accommodation for persons with disabilities to participate in the hearing process [24 CFR 966.56(h)].

LHA Policy LHA will include a statement on the bottom of each denial or termination notice that states: "You have the right to contact Legal Aide Services regarding this notice."

### **PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

#### **2-III.A. OVERVIEW**

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the public housing program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

LHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP). LEP persons are defined as persons who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English. For the purposes of this Admissions and Continued Occupancy Policy, LEP persons are public housing applicants and resident families, and parents and family members of applicants and resident families.

In order to determine the level of access needed by LEP persons, LHA will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the public housing program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to LHA and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on LHA.

#### **2-III.B. ORAL INTERPRETATION**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, LHA will generally offer, or ensure that the family is offered through other sources, competent interpretation services free of charge to the LEP person. The only exception to this rule is when an appointment is scheduled and confirmed, but the applicant or participant fails to attend the scheduled and confirmed appointment. When this occurs, the applicant or participant may be charged for the amount LHA is billed for the missed appointment.

##### LHA Policy

LHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" may not be reasonable where the costs imposed substantially exceed the benefits.

Where feasible, LHA will train and hire bilingual staff to be available to act as interpreters and translators, or will pool resources with other PHAs, and will standardize documents when possible. Where feasible and possible, LHA will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by LHA. The interpreter may be a family member or friend.



### **2-III.C. WRITTEN TRANSLATION**

Translation is the replacement of a written text from one language into an equivalent written text in another language.

#### LHA Policy

In order to comply with written-translation obligations, LHA will take the following steps:

LHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, LHA may not translate vital written materials, but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

### **2-III.D. IMPLEMENTATION PLAN**

After completing the four-factor analysis and deciding what language assistance services are appropriate, LHA shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If LHA determines that it is not necessary to develop a written implementation plan, the absence of a written plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to LHA's public housing program and services.

#### LHA Policy

LHA has developed an agency wide LEP Policy. The Policy will be reviewed annually and revised as needed to meet its population's needs.

### **EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]**

A person with a disability, as defined under federal civil rights laws, is any person who:

Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or has a record of such impairment, or is regarded as having such impairment the phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- "Major life activities" includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.
- "Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- "Is regarded as having an impairment" is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the PHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.
- The definition of a person with disabilities does not include:
  - Current illegal drug users
  - People whose alcohol use interferes with the rights of others

- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the public housing program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this definition of disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation request is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the public housing program, yet an accommodation is needed to provide equal opportunity.

## **Chapter 3-ELIGIBILITY**

### **INTRODUCTION**

LHA is responsible for ensuring that every individual and family admitted to the public housing program meets all program eligibility requirements. This includes any individual approved to join the family after the family has been admitted to the program. The family must provide any information needed by LHA to confirm eligibility and determine the level of the family's assistance.

To be eligible for the public housing program:

The applicant family must: – Qualify as a family as defined by HUD and LHA. – Have income at or below HUD-specified income limits. – Qualify on the basis of citizenship or the eligible immigrant status of family members. – Provide social security number information for family members as required. – Consent to LHA's collection and use of family information as provided for in LHA-provided consent forms.

LHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or LHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and LHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Admission. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause LHA to deny admission.

## **PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

### **3-I.A. OVERVIEW**

Some eligibility criteria and program rules vary depending upon the composition of the family requesting assistance. In addition, some requirements apply to the family as a whole and others apply to individual persons who will live in the public housing unit. This part provides information that is needed to correctly identify family and household members, and to apply HUD's eligibility rules.

### **3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403 and HUD-50058 IB, p. 13, FR Notice 02/03/12**

The terms *family* and *household* have different meanings in the public housing program.

#### **Family**

To be eligible for admission, an applicant must qualify as a family. *Family* as defined by HUD includes but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other person; or group of persons residing together. Such group includes, but is not limited to a family with or without children (a child

who is temporarily away from the home because of placement in foster care is considered a member of the family) an elderly family, a near-elderly family, a disabled family or the remaining member of a tenant family. LHA has the discretion to determine if any other group of persons qualifies as a family. Gender Identity means actual or perceived characteristics. Sexual Orientation means homosexuality, heterosexuality, or bisexuality

#### LHA Policy

##### **Multi-person Family:**

A group of two or more persons who will live together on a regular basis in the same dwelling unit. (A regular basis is one where there is a present intent to live together for an indefinite period of time. The mere sharing of housing accommodations solely to qualify for rental assistance, or solely for the convenience of the parties, is not acceptable);

A family also includes:

##### **Single-person Family:**

A single person who is 62 years old of age or over; or

A single person who is disabled; or

A single person who is displaced; or

A single person who is in the process of securing legal custody of any individual under the age of 18 years; or

A single woman who is pregnant.

All other single persons may apply but will not be housed until all above listed single persons are housed.

##### **Other Family Definitions:**

A child who is temporarily away from the home because of placement in foster care is considered a member of the family;

LHA will not permit others who are currently living in independent circumstances, and have done so for a period of more than six months to move in with the participating family. Such persons may apply for housing by joining the wait list for any LHA housing program when the waiting lists are open.

If a family member moved from the unit and wishes to return, he/she will be allowed to move back in only once.

Waivers to this provision may be requested, and will be reviewed by the LHA on a case by case basis.

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes. Any person reporting custody of minor child(ren) must provide legal documentation supporting legal guardianship.

##### **Household**

*Household* is a broader term that includes additional people who, with LHA's permission, live in a public housing unit, such as live-in aides, foster children, and foster adults.

### **3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY**

#### **Family Break-up**

##### LHA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. **Other former family members may make a new application with a new application date if the waiting list is open.**

If a family breaks up into two otherwise eligible families while living in public housing, only one of the new families will continue to be assisted.

If a court determines the disposition of property between members of the applicant or resident family in a divorce or separation decree, LHA will abide by the court's determination.

In the absence of a judicial decision or an agreement among the original family members, the PHA will determine which family will retain their placement on the waiting list or continue in occupancy. In making its determination, the PHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is or has been the victim of domestic violence, dating violence, or stalking and provides documentation in accordance with section 16-VII.D of this ACOP; (4) any possible risks to family members as a result of criminal activity, and (5) the recommendations of social service professionals.

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### **Remaining Member of a Tenant Family [24 CFR 5.403]**

The HUD definition of family includes the *remaining member of a tenant family*, which is a member of a resident family who remains in the unit when other members of the family have left the unit [PH Occ GB, p. 26]. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family.

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6I.B, for the policy on “Caretakers for a Child.”

### **3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]**

*Head of household* means the adult member of the family who is considered the head for purposes of determining income eligibility and rent. The head of household is responsible for ensuring that the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse.

#### LHA Policy

The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

### **3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT**

A family may have a spouse or co-head, but not both [HUD-50058 IB, p. 13].

*Spouse* means the marriage partner of the head of household. LHA Policy, A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

A *co-head* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

LHA Policy, Minors who are emancipated under state law may be designated as a co-head. *Other adult* means a family member, other than the head, spouse, or co-head, who is 18 years of age or older. Foster adults and live-in aides are not considered other adults [HUD-50058 IB, p. 14].

### **3-I.F. DEPENDENT [24 CFR 5.603]**

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

### **Joint Custody of Dependents**

#### LHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family more than 50 percent of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members or there exists a joint custody agreement, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, LHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes. In no instance will both parents be allowed to include the “joint custody dependent” as a member of each family’s household.

### **3-I.G. FULL-TIME STUDENT [24 CFR 5.603]**

A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution. Identifying each FTS is important because (1) each family member that is an FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction and (2) the income of such an FTS is treated differently from the income of other family members.

### **3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100, 5.403, 945.105, and FR Notice 02/03/12]**

#### **Elderly Persons**

An *elderly person* is a person who is at least 62 years of age.

#### **Near-Elderly Persons**

A *near-elderly person* is a person who is 50-61 years of age

#### **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

### **3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403] FR Notice 02/03/12**

#### **Persons with Disabilities**

Under the public housing program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, LHA must make all aspects of the public housing program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

#### **Disabled Family**

A *disabled family* is one in which the head, spouse, or co-head is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6 and may qualify for a particular type of development as noted in Chapter 4.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent LHA from denying admission for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from enforcing the lease following the policies in Chapter 13.

### **3-I.J. GUESTS [24 CFR 5.100]**

A *guest* is defined as a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

The lease must provide that the tenant has the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests [24 CFR 966.4(d)]. The head of household is responsible for the conduct of visitors and guests, inside the unit as well as anywhere on or near LHA premises [24 CFR 966.4(f)].

#### **LHA Policy**

A resident family must notify LHA when overnight guests will be staying in the unit for more than 3 days. A guest can remain in the unit no longer than 21 cumulative days during any 12 month period.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure expected to last no more than 30 consecutive days). Verification of the tenant's medical or other need for a temporary overnight guest must be independently verified by a licensed professional. An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return. A temporary overnight guest should meet the LHA's criminal background eligibility criteria.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the public housing unit more than 50 percent of the time, are not subject to the time limitations of guests as described above.

A family must request written consent from LHA to allow a foster child or live-in aide to reside in the unit.

Former residents who have been evicted are not permitted as overnight guests.

Guests who represent the unit address as their residence address for receipt of benefits or other purposes will be considered unauthorized occupants. In addition, guests who remain in the unit beyond the allowable time limit will be considered unauthorized occupants, and their presence constitutes violation of the lease.

### **3-I.K. FOSTER CHILDREN AND FOSTER ADULTS**

*Foster adults* are usually persons with disabilities, unrelated to the tenant family, who are unable to live alone [24 CFR 5.609(c) (2)].

The term *foster child* is not specifically defined by the regulations.

Foster children and foster adults that are living with an applicant or resident family are considered household members but not family members. The income of foster children/adults is not counted in family annual income and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603 and HUD-50058 IB, pp. 13-14].

#### LHA Policy

A foster child is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

### **3-I.L. ABSENT FAMILY MEMBERS**

Individuals may be absent from the family, either temporarily or permanently, for a variety of reasons including educational activities, placement in foster care, employment, and illness.

#### **Definitions of Temporarily and Permanently Absent**

#### LHA Policy

Family absence means no member of the family is residing in the unit.

The family may be absent from the assisted unit for brief periods. For anticipated absences of more than 21 consecutive days, the family must notify LHA, in writing, prior to the first day of the absence.

For family absences greater than 60 consecutive days, the family must obtain approval from LHA. Reasonable requests will not be denied. Generally, approval is reserved for medical reasons, e.g., hospitalization, determinable nursing home stays, to care for ill relatives, etc.

Assistance will terminate if a family absence exceeds the maximum period approved by LHA.

Family absences of more than 180 consecutive days will not be approved under any circumstances or for any reason.

For documented and verifiable medical reasons requiring the family to be absent from the unit for more than 180 days, the family's assistance may be resumed if not more than one year has elapsed since the first day of the absence. This option is at the sole discretion of the LHA and will be considered on a case by case basis.

Individual members of a household who are or are expected to be absent from the assisted unit for 180 consecutive days or less are considered temporarily absent and continue to be considered a family member.

Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. These absences must be reported by the family as soon as anticipated or known. Exceptions to this general policy are discussed below.

#### **Absent Students**

#### LHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to LHA indicating that the student has established a separate household or the family declares that the student has established a separate

household. Separate household status may be verified with enrollment paperwork reflecting a different address or photo identification or driver's license address reflecting a different address.

**Absences Due to Placement in Foster Care [24 CFR 5.403]**

Children temporarily absent from the home as a result of placement in foster care are considered members of the family.

LHA Policy

If a child has been placed in foster care, LHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

**Absent Head, Spouse, or Co-head**

LHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member and their income will be counted in the calculation of rent.

**Individuals Confined for Medical Reasons**

LHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member. If there is a question about the status of a family member, LHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

**Return of Permanently Absent Family Members**

LHA Policy

The family must request LHA approval for the return of any adult family members that LHA has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

**3-I.M. LIVE-IN AIDE**

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the persons, (2) is not obligated for the support of the persons, and (3) would not be living in the unit except to provide the necessary supportive services [24 CFR 5.403].

LHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR 8, to make the program accessible to and usable by a family member with disabilities.

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(c) (5)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. However, a relative who serves as a live-in aide is not considered a family member and would not be considered a remaining member of a tenant family.

LHA Policy

1. Before a live-in aide may be moved into a unit, a third-party verification must be supplied that establishes the need for such care and the fact that the person cared for will be able to remain in the unit and comply with the lease terms as the result of such care; In addition, the family and live-in aide will be required to submit a certification stating that the live-in aide is (1) not obligated for the support of the person(s) needing the care, and (2) would not be living in the unit except to provide the necessary supportive services.
2. Move-in of a live-in aide must not result in overcrowding of the existing unit except in extraordinary and temporary circumstances, or as a reasonable accommodation as approved by the LHA;
3. Live-in aides have no right to Public Housing assistance as a remaining member of a participant family even when the live-in aide is a relative of the tenant renting the unit;
4. The income of a live-in aide is not counted in determining the family's rent;

5. A live-in aide can be a single person. A live-in aide with a family may also be considered, provided that the addition of the live-in aide's family does not result in overcrowding of the existing unit. The members of the live in aide's family age 15 and older must pass a background check.
6. Relatives who satisfy the definitions and stipulations herein may qualify as a live-in aide but only if they sign a statement prior to moving in, acknowledging no rights to the unit as the remaining member of a participant family;
7. A live-in aide and their family members will be required to meet screening requirements and must pass LHA's criminal background screening with respect to past behavior, especially:
  - (a) No record of disturbance of neighbors, destruction of property, or of living or housekeeping habits, at present or at prior residences, which may adversely affect the health, safety, or welfare of other residents, neighbors or staff, or cause damage to the unit or the premises; and
  - (b) No Criminal activity such as crimes of physical violence to persons or property and other criminal acts including drug-related criminal activity.
  - (c) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
  - (d) The person currently owes rent or other amounts to LHA or to another LHA in connection with Section 8 or public housing assistance under the 1937 Act.
8. For continued approval, the family may be required to submit a new, written request-subject to LHA verification and screening-at each annual reexamination.
9. Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, LHA will notify the family of its decision in writing.

### **3-I.L Essential Member Addition to the Household**

An essential member of the household may be added as a family member when it is necessary to reside with an elderly or disabled family member for the mental health and welfare of the family member. The necessity of adding an essential member to the family must be evidenced by a doctor's certification, or must be deemed essential and so certified, by Mental Health or other responsible source. To be added to the household as a family member the Essential Household Member must meet all tenant eligibility criteria as required of newly admitted applicants.

#### LHA Policy

Before any Essential Family Member may be moved into a unit, a third-party verification must be supplied that establishes the need for such family support and the fact that the person cared for will be able to remain in the unit and comply with the lease terms as the result of such care.

The Essential Family Member has the right to Public Housing assistance as a remaining member of a participant family.

The income of the Essential Family Member is counted in determining the family's rent;

An essential family member can be a single person. An Essential Family Member with a family may also be considered, provided that the addition of the additional family members does not result in overcrowding of the existing unit.

An essential family member and their family members will be required to meet screening requirements and must pass LHA's criminal background screening with respect to past behavior.



## **PART II: BASIC ELIGIBILITY CRITERIA**

### **3-II.A. INCOME ELIGIBILITY AND TARGETING**

#### **Income Limits**

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the public housing program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Remember, some of our public housing units must comply with the Low-Income Housing Tax Credit Program, additional income restrictions may apply.

#### **Types of Low-Income Families [24 CFR 5.603(b)]**

*Low-income family.* A family whose annual income does not exceed 80 percent of the median income for the area, adjusted for family size.

*Very low-income family.* A family whose annual income does not exceed 50 percent of the median income for the area, adjusted for family size.

*Extremely low-income family.* A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

**HUD also publishes over-income limits annually, but these are not used at admission. Over-income limits will be discussed in Chapter 13.**

#### **Using Income Limits for Eligibility [24 CFR 960.201]**

Income limits are used **to determine** eligibility at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be a *low-income* family. **Using Income Limits for Targeting [24 CFR 960.202(b)]**

At least 40 percent of the families admitted to LHA's public housing program during a LHA fiscal year from LHA waiting list must be *extremely low-income* families. This is called the "basic targeting requirement".

If admissions of extremely low-income families to LHA's housing choice voucher program during a LHA fiscal year exceed the 75 percent minimum targeting requirement for that program, such excess shall be credited against LHA's public housing basic targeting requirement for the same fiscal year.

The fiscal year credit for housing choice voucher program admissions that exceed the minimum voucher program targeting requirement must not exceed the lower of:

Ten percent of public housing waiting list admissions during LHA fiscal year

Ten percent of waiting list admission to LHA's housing choice voucher program during LHA fiscal year the number of qualifying low-income families who commence occupancy during the fiscal year of public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

For discussion of how income targeting is used in tenant selection, see Chapter 4.

### **3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]**

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with LHA's Limited English Proficiency Plan, the notice must be in a language that is understood by the individual if the individual is not proficient in English.

#### **Declaration [24 CFR 5.508]**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who

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elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who

elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

#### ***U.S. Citizens and Nationals***

In general, citizens and nationals are required to submit only a signed declaration that claims their status. However, HUD regulations permit LHA to request additional documentation of their status, such as a passport.

#### **LHA Policy**

Each family member, regardless of age, must submit the following:

For Citizens: A signed declaration of U.S. citizenship; and, an original U.S. Birth Certificate (or certified copy) or a U. S. Passport.

For Noncitizens who are 62 years of age or older and who received assistance on June 19, 1995: (i) A signed declaration of eligible immigration status and (ii) Proof of age document;

For all other Noncitizens: (i) A signed declaration of eligible immigration status; and, (ii) Immigration and Naturalization Service (INS) documents of eligible immigration status; and, (iii) a signed certification consent form.

#### ***Eligible Noncitizens***

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with LHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

Lawful residents of the Marshall Islands, the Federated States of Micronesia, and Palau, together known as the Freely Associated States, or FAS, are eligible for housing assistance under section 141 of the Compacts of Free Association between the U.S. Government and the Governments of the FAS [Public Law 106-504].

#### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family member listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. LHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

#### ***Mixed Families***

A family is eligible for admission as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 14 for a discussion of informal hearing procedures.

#### ***Ineligible Families [24 CFR 5.514(d), (e), and (f)]***

LHA may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.512(b)]. Otherwise, no individual or family may be assisted prior to the affirmative establishment by LHA that the individual or at least one family member is eligible [24 CFR 5.512(a)].

#### **LHA Policy**

LHA will not provide assistance to a family before the verification of at least one family member as a citizen, national, or eligible noncitizen.

When LHA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with LHA. The informal hearing with LHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 14.

**Time Frame for Determination of Citizenship Status [24 CFR 5.508(g)]**

For new occupants joining the resident family LHA must verify status at the first interim or regular reexamination following the person's occupancy, whichever comes first.

If an individual qualifies for a time extension for the submission of required documents, LHA must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

LHA Policy

LHA will verify the status of applicants at the time other eligibility factors are determined.

**3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218] Notice PIH 2012-10**

The applicant and all members of the applicant's must provide documentation of a valid Social Security Number (SSN) or a certification stating that no SSN has been issued. If a household member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

If a new member requests to be added to the household, the new member's SSN documentation must be submitted at the time of the request to add the member to the household or at the time of processing the interim or annual reexamination of family income and or composition. If any member of the household obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted at the family's next regularly scheduled reexamination. If the proposed new member is under the age of six and has not been assigned a SSN, the Head of household is provided 90 days to obtain and provide documentation of the SSN to LHA. LHA must deny admission to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR 5.216.

**3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230]**

HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/

Privacy Act Notice and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

LHA must deny admission to the program if any member of the applicant family fails to sign and submit consent forms which allow LHA to obtain information that LHA has determined is necessary in administration of the public housing program [24 CFR 960.259(a) and (b)].

**PART III: DENIAL OF ADMISSION**

**3-III.A. OVERVIEW**

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied admission.

In addition, HUD requires or permits LHA to deny admission based on certain types of current or past behaviors of family members as discussed in this part. LHA's authority in this area is limited by the Violence against Women Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence, or stalking [24 CFR 5.2005].

This part covers the following topics:

Required denial of admission  
Other permitted reasons for denial of admission  
Screening  
Criteria for deciding to deny admission  
Prohibition against denial of admission to victims of domestic violence, dating violence, or stalking  
Notice of eligibility or denial

### **3-III.B. REQUIRED DENIAL OF ADMISSION [24 CFR 960.204]**

LHA is required to establish standards that prohibit admission of an applicant to the public housing program if they have engaged in certain criminal activity or if LHA has reasonable cause to believe that a household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Where the statute requires that LHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, LHA may choose to continue that prohibition for a longer period of time [24 CFR 960.203(c) (3) (ii)].

HUD requires LHA to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits but does not require LHA to admit an otherwise-eligible family if the household member has completed a LHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

#### LHA Policy

LHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity, if LHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by LHA, or the person who committed the crime is no longer living in the household.

- LHA determines that any household member is currently engaged in the use of illegal drugs. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. *Currently engaged in the illegal use of a drug* means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member [24 CFR 960.205(b)(1)].

#### LHA Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous six months.

- LHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

#### LHA Policy

In determining reasonable cause, LHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. LHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, and the family will be denied admission.

Any household member is currently registered as a sex offender under State registration requirements; the household member will be denied admission.

### **3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION**

HUD permits, but does not require LHA to deny admission for the reasons discussed in this section.

#### **Criminal Activity [24 CFR 960.203 (c)]**

Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points.

LHA is responsible for screening family behavior and suitability for tenancy. In doing so, LHA may consider an applicant's history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.

#### LHA Policy

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied admission.

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or welfare of other tenants [24 CFR 960.203(c) (3)].

Criminal activity that may threaten the health or safety of LHA staff, contractors, subcontractors, or agents.

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse.

Evidence of such criminal activity includes, but is not limited to any record of convictions, arrests, or evictions for suspected drug-related or violent criminal activity of household members within the past 5 years. A conviction for such activity will be given more weight than an arrest or an eviction.

In making its decision to deny assistance, LHA will consider the factors discussed in Sections 3-III.E and 3-III.F.

Upon consideration of such factors, LHA may, on a case-by-case basis, decide not to deny assistance.

#### **Previous Behavior [960.203(c) and (d) and PH Occ GB, p. 48]**

HUD authorizes LHA to deny admission based on relevant information pertaining to the family's previous behavior and suitability for tenancy.

In the event of the receipt of unfavorable information with respect to an applicant, LHA must consider the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). As discussed in Section 3-III.F, LHA may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence, or stalking.

#### LHA Policy

LHA will deny admission to an applicant family if LHA determines that the family:

- Has a pattern of unsuitable past performance in meeting financial obligations, including rent within the past five years,
- Has a pattern of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences within the past five years which may adversely affect the health, safety, or welfare of other tenants,
- Has a pattern of eviction from housing or termination from residential programs within the past five years (considering relevant circumstances),
- Owes rent or other amounts to this or any other PHA or owner in connection with any assisted housing program,
- Misrepresented or does not provide complete information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent,
- Has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program,
- Has engaged in or threatened violent or abusive behavior toward LHA personnel, *Abusive or violent behavior towards LHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

- *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to deny admission, LHA will consider the factors discussed in Sections 3-III.E and 3-III.F. Upon consideration of such factors, LHA may, on a case-by-case basis, decide not to deny admission. LHA will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

### **3-III.D. SCREENING**

#### **Screening for Eligibility**

LHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the public housing program. This authority assists LHA in complying with HUD requirements and LHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records LHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

LHA may not pass along to the applicant the costs of a criminal records check [24 CFR 960.204(d)].

#### LHA Policy

LHA will perform a criminal background check and eviction record check on all applicant family members 18 years of age and older. The LHA will utilize local law enforcement and private screening companies to obtain these records.

LHA will require proof of photo identification, such as a driver's license, school identification, etc. Other means of identification and requests to allow additional time to provide photo identification will be considered.

Family members 18 years of age and older must pass the Housing Authority's criminal history evaluation process. If the results of the criminal background check indicate there may have past criminal activity, but the results are inconclusive, LHA will request a fingerprint card and will request information from the National Crime Information Center (NCIC).

LHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 960.204(a)(4)].

If LHA proposes to deny admission based on a criminal record or on lifetime sex offender registration information, LHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission [24 CFR 5.903(f) and 5.905(d)].

#### ***Obtaining Information from Drug Treatment Facilities [24 CFR 960.205]***

HUD authorizes LHA to request and obtain information from drug abuse treatment facilities concerning applicants. Specifically, LHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head, spouse, or co-head regardless of age, one or more consent forms signed by such household members that requests any drug abuse treatment facility to inform LHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use.

*Drug Abuse Treatment Facility* means an entity that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use and is either an identified unit within a general care facility, or an entity other than a general medical care facility.

*Currently engaging in illegal use of a drug* means illegal use of a drug that occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

Any consent form used for the purpose of obtaining information from a drug abuse treatment facility to determine whether a household member is currently engaging in illegal drug use must expire automatically after LHA has made a final decision to either approve or deny the admission of such person.

Any charges incurred by LHA for information provided from a drug abuse treatment facility may not be passed on to the applicant or tenant.

If LHA chooses to obtain such information from drug abuse treatment facilities, it must adopt and implement one of the two following policies:

Policy A: LHA must submit a request for information to a drug abuse treatment facility for all families before they are admitted. The request must be submitted for each proposed household member who is at least 18 years of age, and for each family head, spouse, or co-head regardless of age.

Policy B: LHA must submit a request for information only for certain household members, whose criminal record indicates prior arrests or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents.

If LHA chooses to obtain such information, it must abide by the HUD requirements for records management and confidentiality as described in 24 CFR 960.205(f).

#### LHA Policy

LHA will request, before any family is admitted, information from drug abuse treatment facilities to determine whether certain household members are currently engaging in illegal drug activity.

LHA will request such information for household members whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission or whose prior tenancy records indicate that the proposed household member engaged in destruction of property or violent activity against another person, or they interfered with the right of peaceful enjoyment of the premises of other residents. Such household members will be required to sign one or more consent forms that request any drug abuse treatment facility to allow LHA to obtain such information.

#### **Screening for Suitability as a Tenant [24 CFR 960.203(c)]**

LHA is responsible for the screening and selection of families to occupy public housing units. LHA may consider all relevant information. Screening is important to public housing communities and program integrity, and to ensure that assisted housing is provided to those families that will adhere to lease obligations.

#### LHA Policy

LHA will consider the family's history with respect to the following factors:

Payment of rent and utilities

Caring for a unit and premises

Respecting the rights of other residents to the peaceful enjoyment of their housing

Criminal activity that is a threat to the health, safety, or property of others

Behavior of all household members as related to the grounds for denial as detailed in Sections 3-III. B and C

Compliance with any other essential conditions of tenancy

#### **Resources Used to Check Applicant Suitability [PH Occ GB, pp. 47-56]**

LHA has a variety of resources available to it for determining the suitability of applicants. Generally, LHA should reject applicants who have recent behavior that would warrant lease termination for a public housing resident.

#### LHA Policy

In order to determine the suitability of applicants LHA will examine applicant history for the past five years. Such background checks will include:

#### *Past Performance in Meeting Financial Obligations, Especially Rent*

PHA and landlord references for the past five years, gathering information about past performance meeting rental obligations such as rent payment record, late payment record, whether the PHA/landlord ever began or completed lease termination for non-payment, and whether utilities were ever disconnected in the unit. PHAs and landlords will be asked if they would rent to the applicant family again.

Utility company references covering the monthly amount of utilities, late payment, disconnection, return of a utility deposit and whether the applicant can get utilities turned on in his/her name. (Use of this inquiry will be reserved for applicants applying for units where there are tenant-paid utilities.)



LHA may check court records of eviction actions and other financial judgments, and credit reports. A lack of credit history will not disqualify someone from becoming a public housing resident, but a poor credit rating may. Applicants with no rental payment history will also be asked to provide LHA with personal references. The references will be requested to complete a verification of the applicant's ability to pay rent if no other documentation of ability to meet financial obligations is available. If previous landlords or the utility company do not respond to requests from LHA, the applicant may provide other documentation that demonstrates their ability to meet financial obligations (e.g. rent receipts, cancelled checks, etc.)

*Disturbances of Neighbors, Destruction of Property or Living or Housekeeping Habits at Prior Residences that May Adversely Affect Health, Safety, or Welfare of Other Tenants, or Cause Damage to the Unit or the Development*

PHA and landlord references for the past five years, gathering information on whether the applicant kept a unit clean, safe and sanitary; whether they violated health or safety codes; whether any damage was done by the applicant to a current or previous unit or the development, and, if so, how much the repair of the damage cost; whether the applicant's housekeeping caused insect or rodent infestation; and whether the neighbors complained about the applicant or whether the police were ever called because of disturbances.

Police and court records within the past five years will be used to check for any evidence of disturbance of neighbors or destruction of property that might have resulted in arrest or conviction.

Personal references will be requested to complete a verification of the applicant's ability to care for the unit and avoid disturbing neighbors if no other documentation is available.

Home visits may be used to determine the applicant's ability to care for the unit.

### **3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION**

#### **Evidence**

##### LHA Policy

LHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

#### **Consideration of Circumstances [24 CFR 960.203(c)(3) and (d)]**

HUD authorizes LHA to consider all relevant circumstances when deciding whether to deny admission based on a family's past history except in the situations for which denial of admission is mandated (see Section 3-III.B).

In the event LHA receives unfavorable information with respect to an applicant, consideration must be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense). In a manner consistent with its policies, PHAs may give consideration to factors which might indicate a reasonable probability of favorable future conduct.

##### LHA Policy

LHA will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.F) a victim of domestic violence, dating violence, or stalking.
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

LHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

The decision regarding approval or denial of an application to the program will always be left to the sound discretion of the Housing Manager or person(s) designated by the Director of Housing.

The denial of an application based on criminal activity shall be treated the same as a denial for any other reason, i.e., the applicant is entitled to a hearing.

Evidence of any member of the applicant household having engaged in criminal activities will be grounds for taking further screening action. LHA's approval or denial of an application will be based on the criminal activity engaged in, and is not dependent upon any action or inaction by any law enforcement agency, district attorney, or court. However, evidence of conviction for a crime shall be conclusive proof that a particular criminal activity was engaged in, and no denial decision shall be based solely upon the fact that an arrest was made for any particular crime.

**Removal of a Family Member's Name from the Application [24 CFR 960.203(c)(3)(i)]**

HUD permits PHAs to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which warrants denial of admission, to not reside in the unit.

LHA Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify in writing that the family member will not be permitted to visit or to stay as a guest in the public housing unit.

After admission to the program, the family must present evidence of the former family member's current address upon LHA's request.

**Reasonable Accommodation [PH Occ GB, pp. 58-60]**

If the family includes a person with disabilities, LHA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

LHA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of admission, LHA will determine whether the behavior is related to the disability. If so, upon the family's request, LHA will determine whether alternative measures are appropriate as a reasonable accommodation. LHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of admission. See Chapter 2 for a discussion of reasonable accommodation.

**3-III.F. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING**

The Violence against Women Act of 2005 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking.

Definitions of key terms used in VAWA are provided in section 16-VII of this ACOP, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

**Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of VAWA rights and the form HUD-5382 at the time the applicant is denied.

PHA Policy

The PHA acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the PHA's policies. Therefore, if the PHA makes a determination to deny admission to an applicant family, the PHA will include in its notice of denial information about the protection against denial provided by VAWA in accordance with section 16-VII.C of this ACOP and will request that an applicant wishing to claim this protection notify the PHA within 14 business days.

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## **Documentation**

### ***Victim Documentation [24 CFR 5.2007]***

#### PHA Policy

If an applicant claims the protection against denial of admission that VAWA provides to victims of domestic violence, dating violence, or stalking, the PHA will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-VII.D of this ACOP.

### ***Perpetrator Documentation***

#### PHA Policy

If the perpetrator of the abuse is a member of the applicant family, the applicant must provide additional documentation consisting of one of the following:

A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the public housing unit. Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

## **3-III.G. NOTICE OF ELIGIBILITY OR DENIAL**

LHA will notify an applicant family of its final determination of eligibility in accordance with the policies in Section 4-III.E.

If a PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before LHA can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)].

#### LHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible; LHA will notify the family in writing of the proposed denial and provide a copy of the record to the applicant and to the subject of the record. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact LHA to dispute the information within that 10 day period, LHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal hearing process.

Notice requirements related to denying admission to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, or stalking are contained in Section 3-III.F.

## **EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES**

### **Person with Disabilities [24 CFR 5.403]**

The term *person with disabilities* means a person who has any of the following types of conditions.

- Has a disability, as defined in 42 U.S.C. Section 423(d) (1) (A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i) (1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) IN GENERAL – The term *developmental disability* means a severe, chronic disability of an individual that; (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) self-care, (II) receptive and expressive language, (III) learning, (IV) mobility, (V) self-direction, (VI) capacity for independent living, (VII) economic self-sufficiency; and (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) INFANTS AND YOUNG CHILDREN – An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

• Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program. For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

**Individual with Handicaps [24 CFR 8.3]**

*Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; Genito-urinary; hemic and lymphatic; skin; and endocrine

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) Major life activities mean functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means:

(a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment

(c) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment

## **Chapter 4 APPLICATIONS, WAITING LIST AND TENANT SELECTION**

### **INTRODUCTION**

When a family wishes to reside in public housing, the family must submit an application that provides LHA with the information needed to determine the family's eligibility. HUD requires LHA to place all eligible families that apply for public housing on a waiting list. When a unit becomes available, LHA must select families from the waiting list in accordance with HUD requirements and LHA policies as stated in its Admissions and Continued Occupancy Policy (ACOP) and its annual plan.

LHA is required to adopt a clear approach to accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or LHA to receive preferential treatment.

HUD regulations require that LHA comply with all equal opportunity requirements and it must affirmatively further fair housing goals in the administration of the program [24 CFR 960.103, PH Occ GB p. 13]. Adherence to the selection policies described in this chapter ensures that LHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and LHA policies for taking applications, managing the waiting list and selecting families from the waiting list. LHA's policies for assigning unit size and making unit offers are contained in Chapter 5. Together, Chapters 4 and 5 of the ACOP comprise LHA's Tenant Selection and Assignment Plan (TSAP).

The policies outlined in this chapter are organized into three sections, as follows:

**Part I: The Application Process.** This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how LHA will handle the applications it receives.

**Part II: Managing the Waiting List.** This part presents the policies that govern how LHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for public housing. It also discusses the process LHA will use to keep the waiting list current.

**Part III: Tenant Selection.** This part describes the policies that guide LHA in selecting families from the waiting list as units become available. It also specifies how in-person interviews will be used to ensure that LHA has the information needed to make a final eligibility determination.

### **PART I: THE APPLICATION PROCESS**

#### **4-I.A. OVERVIEW**

This part describes the policies that guide LHA's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes LHA's obligation to ensure the accessibility of the application process.

#### **4-I.B. APPLYING FOR ASSISTANCE [PIH Notice 2009-36]**

Any family that wishes to reside in public housing must apply for admission to the program [24 CFR 1.4(b) (2) (ii), 24 CFR 960.202(a) (2) (iv), and PH Occ GB, p. 68]. HUD permits LHA to determine the format and content of its applications, as well as how such applications will be made available to interested families and how applications will be accepted by LHA. However, LHA must include Form HUD-90026, Supplement to Application for Federally Assisted Housing, as part of LHA's application.

#### **LHA Policy**

When a site-based wait list is open, a two-step process will be used for all applications. Under the two-step application process, LHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and the amount of rent the family will pay when selected from the waiting list.

Families may obtain application forms from LHA's website at <http://www.lakelandhousing.org> or in person at its Administrative or Property Management Offices during normal business hours. Families may also request – by telephone, e-mail or by mail – which a form be sent to the family via first class mail.

Completed applications must be returned to LHA by mail, by fax, e-mail attachment or submitted in person during normal business hours. Applications must be complete in order to be accepted by LHA for processing. If an application is incomplete or illegible, LHA will notify the family of the additional information required.

#### **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

LHA must take a variety of steps to ensure that the application process is accessible to those people who might have difficulty complying with the normal, standard LHA application process.

##### **Disabled Populations [24 CFR 8; PH Occ GB, p. 68]**

LHA must provide reasonable accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or LHA must provide an alternate approach that provides equal access to the application process. Chapter 2 provides a full discussion of LHA's policies related to providing reasonable accommodations for people with disabilities.

##### **Limited English Proficiency**

PHAs are required to take reasonable steps to ensure meaningful access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on LHA's policies related to ensuring access to people with limited English proficiency (LEP).

#### **4-I.D. PLACEMENT ON THE WAITING LIST**

LHA must review each completed application received and make a preliminary assessment of the family's eligibility. LHA must place on the waiting list families for whom the list is open unless LHA determines the family to be ineligible. Where the family is determined to be ineligible, LHA must notify the family in writing [24 CFR 960.208(a); PH Occ GB, p. 41]. Where the family is determined to be eligible, the family will be placed on the appropriate waiting list of applicants.

No applicant has a right or entitlement to be listed on the waiting list, or to any particular position on the waiting list.

##### **Ineligible for Placement on the Waiting List**

###### LHA Policy

If LHA can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, LHA will send written notification of the ineligibility determination within 10 business days of receiving a completed application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal hearing and explain the process for doing so (see Chapter 14).

##### **Eligible for Placement on the Waiting List**

###### LHA Policy

When a determination has been made that an applicant has a preliminary eligibility determination, the applicant will be notified of the anticipated amount of time before their name will reach the top of the waiting list. Included in this notification, will be the stipulation that the applicant must contact LHA with any changes to their application. LHA will make every effort to accurately estimate the anticipated date; however, the date given by LHA does not mean that applicants should expect to be receiving housing assistance by that date. The availability of Public Housing is contingent upon various factors not directly controlled by LHA, such as turnover rates, the housing rental market and available funding.

Placement on the waiting list does not indicate that the family is, in fact, eligible for admission. A final determination of eligibility and qualification for preferences will be made when the family is selected from the waiting list.

Applicants will be placed on the waiting list according to the date and time their completed application is received by LHA.

Families may select a bedroom size they wish to have provided that their family size falls within LHA standards. Once they are admitted to the unit size of their choice they will not be given a transfer to a different unit size unless their family size falls below or goes above the occupancy standards for that bedroom size (see Chapter 5).

**PART II: MANAGING THE WAITING LIST**

**4-II.A. OVERVIEW**

LHA must have policies regarding the type of waiting list it will utilize as well as the various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for public housing, and conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how LHA may structure its waiting list and how families must be treated if they apply for public housing at a PHA that administers more than one assisted housing program.

**4-II.B. ORGANIZATION OF THE WAITING LIST**

LHA’s public housing waiting list must be organized in such a manner to allow LHA to accurately identify and select families in the proper order, according to the admissions policies described in this ACOP.

LHA Policy

The waiting list will contain the following information for each applicant listed:

- Name and social security number of head of household
- Unit size required (number of family members)
- Amount and source of annual income
- Accessibility requirement, if any
- Date and time of application or application number
- Household type (family, elderly, disabled)
- Admission preference, if any
- Race and ethnicity of the head of household

The specific site(s) selected (site-based waiting lists) LHA may adopt one community-wide waiting list or site-based waiting lists. LHA must obtain approval from HUD through submission of its Annual Plan before it may offer site-based waiting lists. Site-based waiting lists allow families to select the development where they wish to reside and must be consistent with all applicable civil rights and fair housing laws and regulations [24 CFR 903.7(b)(2)].

LHA Policy

LHA will maintain site-based waiting lists. LHA maintains a site-based wait list system, with separate waiting lists by bedroom size for each of the following sites within LHA’s public housing stock:

- Westlake Apartments
- Westlake Addition
- John Wright Homes
- Cecil Gober Villas-Elderly
- Renaissance at Washington Ridge
- The Manor at Washington Ridge-Near Elderly/Senior
- Dakota Park
- Micro-Cottages at Williamstown
  - This policy will apply to the following future communities: Twin Lakes Estates

LHA has the following Public Housing Preferences for Micro Cottages at Williamstown:

The Lakeland Housing Authority will select families based on the following preferences within each bedroom size category and based on our local housing needs and priorities:

Preferences will be weighted as follows:

Veterans from the US Forces	50	Points
Absence of Proscribed Crime	15	Points
Working Family (see glossary)	50	points

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Absence of a Misdemeanor

5 Points



Wait list applicants will be pulled from each list in date and time order plus any preference points. Current Public Housing residents requiring a transfer to another unit due to reasonable accommodation, or due to family composition change that exceeds or is below occupancy standards, will be placed before pulling applicants from the wait list. All other Transfer requests will be placed on the wait list in date order of requests for transfer provided that the wait list is open. Residents requesting a transfer must have lived in Public Housing for at least a year, be a tenant in good standing and have received Property Management approval to apply for a transfer position on a wait list.

Applications received after April 1, 2012, will allow applicants to choose not more than two Public Housing site-based wait lists to be on. These applicants must accept the first list they come up on as they will be removed from all wait lists after the first offer.

Applications received before April 1, 2012 will be allowed to choose not more than two Public Housing site-based wait lists to be on and will be allowed one offer from each wait list. Once offered a unit from a particular wait list, if the applicant refuses the offer, the applicant is removed from that wait list and cannot jump to other wait lists.

If an applicant accepts a unit from the first list, they come to the top on they will be removed from any other Public Housing list they selected.

Applicants can change which wait list they want to be on and are eligible for after applying but cannot change wait lists once they are pulled from the wait list and are in the process of receiving an offer.

HUD directs that a family that applies to reside in public housing must be offered the opportunity to be placed on the waiting list for any tenant-based or project-based voucher or moderate rehabilitation program that LHA operates if 1) the other programs' waiting lists are open, and 2) the family is qualified for the other programs [24 CFR 982.205(a) (2) (i)].

HUD permits, but does not require, that LHA maintain a single merged waiting list for their public housing, Section 8, and other subsidized housing programs [24 CFR 982.205(a)(1)].

LHA Policy

LHA will not merge the public housing waiting list with the waiting list for any other program LHA operates.

#### **4-II.C. OPENING AND CLOSING THE WAITING LIST Closing the Waiting List**

LHA is permitted to close the waiting list, in whole or in part, if it has an adequate pool of families to fill its developments. LHA may close the waiting list completely, or restrict intake by preference, type of project, or by size and type of dwelling unit. [PH Occ. GB, p. 31].

LHA Policy

LHA will close the waiting list when the estimated waiting period for housing applicants on the list reaches 24 months for the most current applicants. Where LHA has particular preferences or other criteria that require a specific category of family, LHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

#### **Reopening the Waiting List**

If the waiting list has been closed, it may be reopened at any time. LHA should publish a notice in local newspapers of general circulation, minority media, and other suitable media outlets that LHA is reopening the waiting list. Such notice must comply with HUD fair housing requirements. LHA should specify who may apply, and where and when applications will be received.

LHA Policy

LHA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice. The notice will specify where, when, and how applications are to be received.

LHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

El Hispanic News

The Ledger  
The Tampa Tribune  
The Coupon book  
The Floridian  
The LHA Newsletter  
The LHA Website  
The Asian news  
Others

Independent Living Resources Newsletters for seniors and or disabled. Additionally, LHA will make individual agency notifications including, but not limited to local nonprofits and government agencies.

#### **4-II.D. FAMILY OUTREACH [24 CFR 903.2(d); 24 CFR 903.7(a) and (b)]**

LHA should conduct outreach as necessary to ensure that LHA has a sufficient number of applicants on the waiting list to fill anticipated vacancies and to assure that LHA is affirmatively furthering fair housing and complying with the Fair Housing Act.

Because HUD requires LHA to serve a specified percentage of extremely low-income families, LHA may need to conduct special outreach to ensure that an adequate number of such families apply for public housing.

LHA outreach efforts must comply with fair housing requirements. This includes:

- Analyzing the housing market area and the populations currently being served to identify underserved populations
- Ensuring that outreach efforts are targeted to media outlets that reach eligible populations that are underrepresented in the program
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class LHA outreach efforts must be designed to inform qualified families about the availability of units under the program. These efforts may include, as needed, any of the following activities:
- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low-income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

#### LHA Policy

LHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in LHA's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

#### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

##### LHA Policy

While the family is on the waiting list, the family must inform LHA, within 10 business days, of changes in family size or composition, preference status, or contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing or by phone to the Community Office Wait List/Leasing Agent or Housing Manager.

Changes in an applicant's circumstances while on the waiting list may affect the family's qualification for a particular bedroom size. When an applicant reports a change that affects their placement on the waiting list, the waiting list will be updated accordingly.

#### **4-II.F. UPDATING THE WAITING LIST**

HUD requires LHA to establish policies to use when removing applicant names from the waiting list [24 CFR 960.202(a) (2) (iv)].

##### **Purging the Waiting List**

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to LHA's request for information or updates because of the family member's disability, LHA must, upon the family's request, reinstate the applicant family to their former position on the waiting list as a reasonable accommodation [24 CFR 8.4(a), 24 CFR 100.204(a), and PH Occ. GB, p. 39 and 40]. See Chapter 2 for further information regarding reasonable accommodations.

##### LHA Policy

The waiting list may be updated as needed to ensure that all applicants and applicant information is current and timely.

The waiting list will be updated during the process of contacting the applicant. Should LHA need to contact the applicant family prior to the family nearing the top of the waiting list, a letter will be sent to the applicant's last known address. If there is no response within 15 days of the date of the attempted contact, with no returned letter, a second letter will be sent. This letter will allow 30 days from the date it is sent to reactivate the application. If the first notification is returned to LHA with a forwarding address it is resent and another 10 days is given to respond. If there is no response a second letter is sent to the new address allowing 30 days to reactivate. If the first letter is returned with no forwarding address the application is filed inactive and no further notifications are sent. However, if the family contacts LHA within 90 days of the date of the returned notice, the application will be reactivated and the family's application will be placed back on the waiting list by the original date and time applied. If a family is removed from the waiting list for failure to respond, the Housing Asset Manager may reinstate the family if s/he determines the lack of response was due to LHA error.

##### **Removal from the Waiting List**

##### LHA Policy

LHA will remove applicants from the waiting list if they have requested that their name be removed. In such cases no informal hearing is required.

If LHA determines that the family is not eligible for admission (see Chapter 3) at any time while the family is on the waiting list the family will be removed from the waiting list. If an applicant family experiences an increase in income that makes them not eligible but LHA determines that the income increase may be temporary, the family will be kept on the wait list. The family will be advised that if they are still over program income limits by the time they reach the top of the wait list, they will not be eligible to participate in the program.

If a family is removed from the waiting list because LHA has determined the family is not eligible for admission, a notice will be sent to the family's address of record. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal hearing regarding LHA's decision (see Chapter 14) [24 CFR 960.208(a)].

#### **PART III: TENANT SELECTION**

##### **4-III.A. OVERVIEW**

LHA must establish tenant selection policies for families being admitted to public housing [24 CFR 960.201(a)]. LHA must not require any specific income or racial quotas for any developments [24 CFR 903.2(d)]. LHA must not assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations [24 CFR 1.4(b)(1)(iii) and 24 CFR 903.2(d)(1)].

The order in which families will be selected from the waiting list depends on the selection method chosen by LHA and is impacted in part by any selection preferences that the family qualifies for. The availability of units also may affect the order in which families are selected from the waiting list.

LHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to LHA’s selection policies [24 CFR 960.206(e)(2)]. LHA’s policies must be posted any place where LHA receives applications. LHA must provide a copy of its tenant selection policies upon request to any applicant or tenant. LHA may charge the family for providing a copy of its tenant selection policies [24 CFR 960.202(c)(2)].

LHA Policy

When an applicant or resident family requests a copy of LHA’s tenant selection policies, LHA will direct them to the website version at <http://www.lakelandhousing.org>. Paper copies will be provided at a cost of \$0.25 per page.

**4-III.B. SELECTION METHOD**

LHA must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that LHA will use.

**Local Preferences [24 CFR 960.206]**

LHA is permitted to establish local preferences and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits LHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with LHA plan and the consolidated plan and must be based on local housing needs and priorities that can be documented by generally accepted data sources [24 CFR 960.206(a)].

LHA Policy

LHA has established the following local preferences.

Relocated at the request of the Lakeland Housing Authority	50	points
Graduates of a Lakeland-based approved transitional housing program for homeless persons	30	points
Absence of Proscribed Crime	15	points
Working Family and/or US Veterans ( <b>see glossary</b> )	50	points
Absence of a Misdemeanor	5	points
Enrolled in School (school age dependents)	1	point
Residency	1	point
Voter Registration	1	point
Victim of Domestic Violence	1	Point

**Income Targeting Requirement [24 CFR 960.202(b)]**

HUD requires that extremely low-income (ELI) families make up at least 40% of the families admitted to public housing during LHA’s fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, LHA may skip non-ELI families on the waiting list in order to select an ELI family.

LHA also operates a housing choice voucher (HCV) program, admissions of extremely low-income families to LHA’s HCV program during LHA's fiscal year that exceed the 75% minimum target requirement for the voucher program, shall be credited against LHA’s basic targeting requirement in the public housing program for the same

fiscal year. However, under these circumstances the fiscal year credit to the public housing program must not exceed the lower of: (1) ten percent of public housing waiting list admissions during LHA's fiscal year; (2) ten percent of waiting list admissions to LHA's housing choice voucher program during LHA's fiscal year; or (3) the number of qualifying low-income families who commence occupancy during the fiscal year of LHA's public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low-income family means a low-income family other than an extremely low-income family.

#### LHA Policy

LHA will monitor progress in meeting the ELI requirement throughout the fiscal year.

ELI families will be selected ahead of other eligible families on an as-needed basis to ensure that the income targeting requirement is met.

#### **Mixed Population Developments [24 CFR 960.407]**

A mixed population development is a public housing development or portion of a development that was reserved for elderly families and disabled families at its inception (and has retained that character) or LHA at some point after its inception obtained HUD approval to give preference in tenant selection for all units in the development (or portion of a development) to elderly and disabled families [24 CFR 960.102]. Elderly family means a family whose head, spouse, co-head, or sole member is a person who is at least 62 years of age. Disabled family means a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403]. LHA must give elderly and disabled families equal preference in selecting these families for admission to mixed population developments. LHA may not establish a limit on the number of elderly or disabled families that may occupy a mixed population development. In selecting elderly and disabled families to fill these units, LHA must first offer the units that have accessibility features for families that include a person with a disability and require the accessibility features of such units. LHA may not discriminate against elderly or disabled families that include children (Fair Housing Amendments Act of 1988).

#### **Units Designated for Elderly or Disabled Families [24 CFR 945]**

LHA may designate projects or portions of a public housing project specifically for elderly or disabled families. LHA must have a HUD-approved allocation plan before the designation may take place.

Among the designated developments, LHA must also apply any preferences that it has established. If there are not enough elderly families to occupy the units in a designated elderly development, LHA may allow near-elderly families to occupy the units [24 CFR 945.303(c)(1)]. Near-elderly family means a family whose head, spouse, or co-head is at least 50 years old, but is less than 62 [24 CFR 5.403].

If there are an insufficient number of elderly families and near-elderly families for the units in a development designated for elderly families, LHA must make available to all other families any unit that is ready for re-rental and has been vacant for more than 60 consecutive days [24 CFR 945.303(c)(2)].

The decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse effect on their admission or continued occupancy in public housing or their position on or placement on the waiting list. However, this protection does not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area [24 CFR 945.303(d)(1) and (2)].

This protection does apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project [24 CFR 945.303(d)(3)].

#### LHA Policy

LHA does not have designated elderly or designated disabled housing at this time.

#### **De-concentration of Poverty and Income-Mixing [24 CFR 903.1 and 903.2]**

LHA's admission policy must be designed to provide for de-concentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects. A statement of LHA's de-concentration policies must be included in its annual plan [24 CFR 903.7(b)].

LHA's de-concentration policy must comply with its obligation to meet the income targeting requirement [24 CFR 903.2(c)(5)].

Developments subject to the de-concentration requirement are referred to as ‘covered developments’ and include general occupancy (family) public housing developments. The following developments are not subject to de-concentration and income mixing requirements: developments operated by LHA with fewer than 100 public housing units; mixed population or developments designated specifically for elderly or disabled families; developments operated by LHA with only one general occupancy development; developments approved for demolition or for conversion to tenant-based public housing; and developments approved for a mixed-finance plan using HOPE VI or public housing funds [24 CFR 903.2(b)].

***Steps for Implementation [24 CFR 903.2(c) (1)]***

To implement the statutory requirement to de-concentrate poverty and provide for income mixing in covered developments, LHA must comply with the following steps:

Step 1. LHA must determine the average income of all families residing in all LHA's covered developments. LHA may use the median income, instead of average income, provided that LHA includes a written explanation in its annual plan justifying the use of median income.

LHA Policy

LHA will determine the average income of all families in all covered developments on an annual basis.

Step 2. LHA must determine the average income (or median income, if median income was used in Step 1) of all families residing in each covered development. In determining average income for each development, LHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

LHA Policy

LHA will determine the average income of all families residing in each covered development (not adjusting for unit size) on an annual basis.

Step 3. LHA must then determine whether each of its covered developments falls above, within, or below the established income range (EIR), which is from 85% to 115% of the average family income determined in Step 1. However, the upper limit must never be less than the income at which a family would be defined as an extremely low-income family (30% of median income).

Step 4. LHA with covered developments having average incomes outside the EIR must then determine whether or not these developments are consistent with its local goals and annual plan.

Step 5. Where the income profile for a covered development is not explained or justified in the annual plan submission, LHA must include in its admission policy its specific policy to provide for de-concentration of poverty and income mixing.

Depending on local circumstances LHA’s de-concentration policy may include, but is not limited to the following:

- Providing incentives to encourage families to accept units in developments where their income level is needed, including rent incentives, affirmative marketing plans, or added amenities
- Targeting investment and capital improvements toward developments with an average income below the EIR to encourage families with incomes above the EIR to accept units in those developments
- Establishing a preference for admission of working families in developments below the EIR
- Skipping a family on the waiting list to reach another family in an effort to further the goals of de-concentration
- Providing other strategies permitted by statute and determined by LHA in consultation with the residents and the community through the annual plan process to be responsive to local needs and LHA strategic objectives

A family has the sole discretion whether to accept an offer of a unit made under LHA's de-concentration policy. LHA must not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under LHA's de-concentration policy [24 CFR 903.2(c) (4)].

If, at annual review, the average incomes at all general occupancy developments are within the EIR, LHA will be considered to be in compliance with the de-concentration requirement and no further action is required.

LHA Policy

For developments outside the EIR LHA will take the following actions to provide for de-concentration of poverty and income mixing:

- LHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met. The periods of income targeting shall coincide with the LHA's fiscal year (January 1st through December 31st). LHA will track the percentage of initial lease-up at or below 30% of the area median income. If the cumulative fiscal year percentage falls below 75%, LHA may offer Public Housing only to applicants whose income is at or below 30% if necessary to meet federally mandated goals. If the household income of an applicant who receives Public Housing assistance during this period exceeds the 30% income limit at any time during the lease-up phase, the applicant will be found ineligible and notified and put back on the waiting list.

#### **Order of Selection [24 CFR 960.206(e)]**

LHA's system of preferences may select families either according to the date and time of application or by a random selection process.

#### **LHA Policy**

Families will be selected from the waiting list on a first-come, first-served basis according to the date and time and preference points in their complete application are received by LHA.

When selecting applicants from the waiting list LHA will match the characteristics of the available unit (unit size, accessibility features, unit type) to the applicants on the waiting lists. LHA will offer the unit to the highest ranking applicant who qualifies for that unit size or type, or that requires the accessibility features.

By matching unit and family characteristics, it is possible that families who are lower on the waiting list may receive an offer of housing ahead of families with an earlier date and time of application or higher preference status.

Factors such as de-concentration or income mixing, and income targeting will also be considered in accordance with HUD requirements and LHA policy.

#### **4-III.C. NOTIFICATION OF SELECTION**

When the family has been selected from the waiting list, LHA must notify the family. LHA Policy LHA will notify the family by first class mail when it is selected from the waiting list.

The notice will inform the family of the following:

- Applicants are notified to call and schedule a date and time for an application interview. Procedures for rescheduling the interview
- Who is required to attend the interview Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation
- Other documents and information that should be brought to the interview
- If a notification letter is returned to LHA with no forwarding address, the family will be removed from the waiting list.

#### **4-III.D. THE APPLICATION INTERVIEW**

HUD recommends that LHA obtain the information and documentation needed to make an eligibility determination through a private interview. Being invited to attend an interview does not constitute admission to the program.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2012-10].

Reasonable accommodation must be made for persons with disabilities who are unable to attend an interview due to their disability [24 CFR 8.4(a) and 24 CFR 100.204(a)].

#### **LHA Policy**

Families selected from the waiting list are required to participate in an eligibility interview.

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to LHA.

The interview will be conducted only if the head of household or spouse/co-head provides appropriate documentation of legal identity (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

Pending disclosure and documentation of social security numbers, the PHA will allow the family to retain its place on the waiting list for 30 days. If not, all household members have disclosed their SSNs at the next time a unit becomes available, the PHA will offer a unit to the next eligible applicant family on the waiting list.

The family must provide the information necessary to establish the family's eligibility, including suitability, and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures and submit required documentation. If any materials are missing, LHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (see Chapter 3).

An advocate, interpreter, or other assistant may assist the family with the application and the interview process. Interviews will be conducted in English. For limited English proficient (LEP) applicants, LHA will provide translation services in accordance with LHA's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact LHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, LHA will send a file inactive notification letter giving the family 30 days to respond and schedule a new appointment. If the family fails to respond, they are automatically filed inactive per the notification.

#### **4-III.E. FINAL ELIGIBILITY DETERMINATION [24 CFR 960.208]**

LHA must verify all information provided by the family (see Chapter 7). Based on verified information related to the eligibility requirements, including LHA suitability standards, LHA must make a final determination of eligibility (see Chapter 3).

When a determination is made that a family is eligible and satisfies all requirements for admission, including tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined [24 CFR 960.208(b)].

##### LHA Policy

LHA will notify a family verbally of their eligibility within 10 business days of the determination and will provide the approximate date of occupancy insofar as that date can be reasonably determined.

LHA must promptly notify any family determined to be ineligible for admission of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination [24 CFR 960.208(a)].

##### LHA Policy

If LHA determines that the family is ineligible, LHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal hearing (see Chapter 14).

If LHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before LHA can move to deny the application. See Section 3-III.G for LHA's policy regarding such circumstances.



Upon making an eligibility determination, the PHA must provide the family a notice of VAWA rights as well as the HUD VAWA self-certification form (form HUD-53825382) in accordance with the Violence against Women Act of 2013, and as outlined in 16-VII.C. The notice and self-certification form must accompany the written notification of eligibility determination. This notice must be provided in both of the following instances: (1) when a family is notified of its eligibility; or (2) when a family is notified of its ineligibility.

BEDROOM SIZE	MINIMUM NUMBER OF PERSONS	MAXIMUM NUMBER OF PERSONS
0	1	1
1	1	3
2	2	5
3	3	7
4	5	9
5	7	11

**Chapter 5**

**OCCUPANCY STANDARDS AND UNIT OFFERS**

**INTRODUCTION**

LHA must establish policies governing occupancy of dwelling units and offering dwelling units to qualified families.

This chapter contains policies for assigning unit size and making unit offers. LHA’s waiting list and selection policies are contained in Chapter 4. Together, Chapters 4 and 5 of the ACOP comprise LHA’s Tenant Selection and Assignment Plan (TSAP).

Policies in this chapter are organized in two parts.

Part I: Occupancy Standards. This part contains LHA’s standards for determining the appropriate unit size for families of different sizes and types.

Part II: Unit Offers. This part contains LHA’s policies for making unit offers, and describes actions to be taken when unit offers are refused.

**PART I: OCCUPANCY STANDARDS**

**5-I.A. OVERVIEW**

Occupancy standards are established by LHA to ensure that units are occupied by families of the appropriate size. This policy maintains the maximum usefulness of the units, while preserving them from excessive wear and tear or underutilization. Part I of this chapter explains the occupancy standards. These standards describe the methodology and factors LHA will use to determine the size unit for which a family qualifies and includes the identification of the minimum and maximum number of household members for each unit size. This part also identifies circumstances under which an exception to the occupancy standards may be approved.

**5-I.B. DETERMINING UNIT SIZE**

In selecting a family to occupy a particular unit, LHA may match characteristics of the family with the type of unit available, for example, number of bedrooms [24 CFR 960.206(c)]. HUD does not specify the number of persons who may live in public housing units of various sizes. LHA is permitted to develop appropriate occupancy standards as long as the standards do not have the effect of discriminating against families with children [PH Occ GB, p. 62].

Although LHA does determine the size of unit the family qualifies for under the occupancy standards, LHA does not determine who shares a bedroom/sleeping room. LHA’s occupancy standards for determining unit size must be applied in a manner consistent with fair housing requirements.

LHA Policy LHA will use the same occupancy standards for each of its developments. LHA’s occupancy standards are as follows:

Each unit is intended for single family occupancy. LHA will assign one bedroom for each two persons within the household, except in the following circumstances:

Persons of the opposite sex (other than spouses, and children under age 5) will not be required to share a

bedroom. Persons of different generations will not be required to share a bedroom. Live-in aides will be allocated a separate bedroom. No additional bedrooms will be provided for the live-in aide's family. Single person families will be allocated a zero or one bedroom.

Foster children will be included in determining unit size. In addition to the above standards, the following guidelines will apply when initially assigning a family to a unit:

- (a) A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size;
- (b) A child who is temporarily away from the home to attend school is considered a member of the family in determining the family unit size;
- (c) A family consisting solely of a pregnant woman will be treated as a two person household; LHA will reference the following standards in determining the appropriate unit bedroom size for a family:

LHA has no Public Housing units larger than five-bedroom units. Should the family size increase to the point where a six-bedroom unit is required, the family will be offer a 5 bedroom, if available. If the term of the offer expires and the family still has not moved, the Housing Authority will take steps to terminate the lease agreement, unless this is waived by the Executive Director. A waiver will only be considered in the most unique of circumstances.

In accordance with the lease, boarders or lodgers shall not be permitted to occupy a dwelling unit, nor shall they be permitted to move in with any family occupying a dwelling unit. Violation of this provision is ground for termination of the lease.

Resident will not be given permission to allow a former resident of LHA who has been evicted to join the household. Violation of this requirement is grounds for termination of the lease.

Family members age 18 or older, or emancipated minors who move from the dwelling unit to establish new households, shall be removed from the lease. The resident has the responsibility to immediately report the move-out to LHA. This does not apply to those temporarily away at school, but intending to return to the household. These individuals may not be readmitted to the unit. However, they may apply as new applicant households for placement on the waiting list (subject to applicable income limits, preferences, resident selection, and screening requirements). Medical hardship or other extenuating circumstances may be considered by LHA in making determinations under this paragraph.

## **5-I.C. EXCEPTIONS TO OCCUPANCY STANDARDS**

### **Types of Exceptions**

#### LHA Policy

LHA will consider granting exceptions to the occupancy standards at the family's request if LHA determines the exception is justified by the relationship, age, sex, health or disability of family members, or other personal circumstances.

For example, an exception may be granted if a larger bedroom size is needed for medical equipment due to its size and/or function, or as a reasonable accommodation for a person with disabilities. An exception may also be granted for a smaller bedroom size in cases where the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides (according to the chart in Section 5I.B) and the family does not want to transfer to a larger size unit.

When evaluating exception requests LHA will consider the size and configuration of the unit. In no case will LHA grant an exception that is in violation of local housing or occupancy codes, regulations or laws.

Requests from applicants to be placed on the waiting list for a unit size smaller than designated by the occupancy standards will be approved as long as the unit is not overcrowded according to local code, and the family agrees not to request a transfer for a period of two years from the date of admission, unless they have a subsequent change in family size or composition.

To prevent vacancies, LHA may provide an applicant family with a larger unit than the occupancy standards permit. However, in these cases the family must agree to move to a suitable, smaller unit when another family qualifies for the larger unit and there is an appropriate size unit available for the family to transfer to.

### **Processing of Exceptions**

#### LHA Policy

All requests for exceptions to the occupancy standards must be submitted in writing.

In the case of a request for exception as a reasonable accommodation, LHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, LHA will consider the

exception request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

Requests for a larger size unit must explain the need or justification for the larger size unit, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability-related request for accommodation is readily apparent or otherwise known.

LHA will notify the family of its decision within 14 business days of receiving the family's request.

## **PART II: UNIT OFFERS**

24 CFR 1.4(b) (2) (ii); 24 CFR 960.208

### **5-II.A. OVERVIEW**

LHA must assign eligible applicants to dwelling units in accordance with a plan that is consistent with civil rights and nondiscrimination.

In filling an actual or expected vacancy, LHA must offer the dwelling unit to an applicant in the appropriate sequence. LHA will offer the unit until it is accepted. This section describes LHA's policies with regard to the number of unit offers that will be made to applicants selected from the waiting list. This section also describes LHA's policies for offering units with accessibility features.

#### LHA Policy

LHA will maintain a record of units offered, including location, date and circumstances of each offer, each acceptance or rejection, including the reason for the rejection.

### **5-II.B. NUMBER OF OFFERS**

#### LHA Policy

LHA has adopted a "one offer plan" for offering units to applicants. Under this plan the first qualified applicant in sequence on the waiting list will be made one offer of a unit of the appropriate size, at a site in which the applicant has applied. For all applications received after April 1, 2013, if an applicant has applied to be on two site based wait lists, there will only be one offer at the first available site and if the offer is rejected, no other offers will be made and the applicant is taken off all wait lists. For all applications received before April 1, 2013, applicants will be given a maximum of one offer from each site based wait list they had applied to be on.

### **5-II.C. TIME LIMIT FOR UNIT OFFER ACCEPTANCE OR REFUSAL**

#### LHA Policy

Applicants must accept or refuse a unit offer within 3 business days of the date of the unit offer.

Offers made by telephone will be confirmed by letter.

### **5-II.D. REFUSALS OF UNIT OFFERS**

#### **Good Cause for Unit Refusal**

An elderly or disabled family may decline an offer for designated housing. Such a refusal must not adversely affect the family's position on or placement on the public housing waiting list [24 CFR 945.303(d)].

#### LHA Policy

Applicants may refuse to accept a unit offer for "good cause." *Good cause* includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer, or the applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc. [PH Occ. GB, p. 104]. Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, so that accepting the unit offer would require the adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities

- The family demonstrates to LHA's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, or risk assessments related to witness protection from a law enforcement agency. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member. The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move
- The unit has lead-based paint and the family includes children under the age of six

In the case of a unit refusal for good cause the applicant will not be removed from the waiting list as described later in this section. The applicant will remain at the top of the waiting list until the family receives an offer for which they do not have good cause to refuse.

LHA will require documentation of good cause for unit refusals.

#### **Unit Refusal without Good Cause**

##### LHA Policy

When an applicant rejects the final unit offer without good cause, LHA will remove the applicant's name from the waiting list and send notice to the family of such removal. All applications received after April 1, 2013, will be automatically removed from all wait lists once an offer has been made and refused without good cause. The notice will inform the family of their right to request an informal hearing and the process for doing so (see Chapter 14). The applicant may reapply for assistance if the waiting list is open. If the waiting list is not open, the applicant must wait to reapply until LHA opens the waiting list.

#### **5-II.E. ACCESSIBLE UNITS [24 CFR 8.27]**

LHA must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with disabilities, and take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of a particular unit.

When an accessible unit becomes vacant, before offering such units to a non-disabled applicant LHA must offer such units:

- First, to a current resident of another unit of the same development, or other public housing development under LHA's control, who has a disability that requires the special features of the vacant unit and is occupying a unit not having such features, or if no such occupant exists, then
- Second, to an eligible qualified applicant on the waiting list having a disability that requires the special features of the vacant unit.

When offering an accessible unit to an applicant not having a disability requiring the accessibility features of the unit, LHA may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

##### LHA Policy

Families requiring an accessible unit may be over-housed in such a unit if there are no resident or applicant families of the appropriate size who also require the accessible features of the unit.

When there are no resident or applicant families requiring the accessible features of the unit, including families who would be over-housed, LHA will offer the unit to a non-disabled applicant.

When offering an accessible unit to a non-disabled applicant, LHA will require the applicant to agree to move to an available non-accessible unit within 30 days when either a current resident or an applicant needs the features of the unit and there is another unit available for the non-disabled family. This requirement will be a provision of the lease agreement.

#### **5-II.F. DESIGNATED HOUSING**

LHA has no designated housing inventory at this time.

## Chapter 6 INCOME AND RENT DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 960, Subpart C]

### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's rent payment. LHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and LHA policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and LHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established HUD regulations require LHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and LHA policies for calculating adjusted income are found in Part II.

Part III: Calculating Rent. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining family rent payment. Also included here are flat rents and the family's choice in rents.

### PART I: ANNUAL INCOME 6-I.A. OVERVIEW

The general regulatory definition of *annual income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or not, which:

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and (3) Which are not specifically excluded in paragraph [5.609(c)]. (4)

Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

In addition to this general definition, HUD regulations establish policies for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

Annual Income Inclusions (Exhibit 6-1)

Annual Income Exclusions (Exhibit 6-2)

Treatment of Family Assets (Exhibit 6-3)

Earned Income Disallowance (Exhibit 6-4)

The Effect of Welfare Benefit Reduction (Exhibit 6-5)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this ACOP, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

### 6-I.B. HOUSEHOLD COMPOSITION AND INCOME

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

#### Temporarily Absent Family Members

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].

Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(a)(1)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, or co-head)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income, except those specifically excluded by the regulations, are included.

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

LHA Policy

Generally an individual who is or is expected to be absent from the assisted unit for 180 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

***Absent Students***

LHA Policy

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to LHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

***Absences Due to Placement in Foster Care***

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

LHA Policy

If a child has been placed in foster care, LHA will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

***Absent Head, Spouse, or Co-head***

LHA Policy

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member.

***Individuals Confined for Medical Reasons***

LHA Policy

LHA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualify as an elderly person or a person with disabilities.

### **Joint Custody of Children**

#### LHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or resident family more than 50 percent of the time.

When more than one applicant or assisted family (regardless of program) are claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, LHA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

### **Caretakers for a Child**

#### LHA Policy

If neither a parent nor a designated guardian remains in a household receiving assistance, LHA will take the following actions.

If a responsible agency has determined that another adult is to be brought into the unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases LHA will extend the caretaker's status as an eligible visitor.

At any time that custody or guardianship legally has been awarded to a caretaker, the lease will be transferred to the caretaker, as head of household.

During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

### **6-I.C. ANTICIPATING ANNUAL INCOME**

LHA is required to count all income "anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date" [24 CFR 5.609(a)(2)]. Policies related to anticipating annual income are provided below.

#### **Basis of Annual Income Projection**

LHA generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes LHA to use other than current circumstances to anticipate income when:

An imminent change in circumstances is expected [HCV GB, p. 5-17]

It is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income) [24 CFR 5.609(d)]

The PHA believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

#### LHA Policy

LHA is required to use HUD's Enterprise Income Verification system (EIV). When EIV is obtained and the family does not dispute the EIV employer data, LHA will use current tenant-provided documents to project annual income. When the tenant provided documents are pay stubs, LHA will make every effort to obtain at least 8 consecutive pay stubs dated within the last 60 days.

LHA will obtain written and/or oral third-party verification in accordance with the verification requirements and policy in Chapter 7 in the following cases:

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If LHA determines additional information is needed.



In such cases, LHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how LHA annualized projected income.

When LHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), LHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to LHA to show why the historic pattern does not represent the family's anticipated income. Added language to comply with Notice PIH 2013-03 temporary policies to accept self-certification of assets up to \$5000; added language for the elderly and disabled families with fixed incomes, the PHA will recalculate annual income by applying any published Cost of Living Adjustment (COLA) to the previously verified amounts, current documentation of fixed income is not required. However, if the family receives any income from a non-fixed income source, the PHA will not streamline the annual re-examination. The PHA must follow existing regulatory requirements for verification of deductions.

Notice PIH 2013-04 added language allowing self-certification of fully excluded income;

Changed language for a requirement of four consecutive pay stubs to a minimum of two consecutive paystubs for verification of earned income;

Updated verification requirements for individual items to comply with Notice PIH 2010-19 Verification Guidance;

### ***Known Changes in Income***

If LHA verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

**Example:** An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case LHA would calculate annual income as follows:  $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases LHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if LHA's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided documents are used to anticipate annual income, they will be dated within the last 90 days of the reexamination interview date.

### **Up-Front Income Verification (UIV) and Income Projection**

HUD requires the use of up-front income verification (UIV) techniques. UIV is "the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals" [VG, p. 7]. One such source is HUD's Enterprise Income Verification (EIV) system, which maintains data on three types of income: wages, unemployment benefits, and social security (SS) and supplemental security income (SSI) benefits. Effective January 31, 2010, PHAs are required to use the Enterprise Income Verification (EIV) system in accordance with the Refinement of Income and Rent Rule which was published on December 29, 2009. HUD allows LHA to use UIV data as third-party verification of an income source when a resident does not dispute the source. UIV data, however, is generally several months old. Therefore, except in the case of SS and SSI benefits, which are not subject to frequent or dramatic changes, HUD expects LHA to base its income projection on documentation of current circumstances provided by the resident (such as consecutive pay stubs dated within the last 90 days) or by the income source (if LHA determines that additional verification is necessary).

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## **6-I.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### ***Wages and Related Compensation [24 CFR 5.609(b)(1)]***

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income.

#### **LHA Policy**

For persons who regularly receive bonuses or commissions, LHA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, LHA will use the prior year amounts. In either case the family may provide, and LHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, LHA will count only the amount estimated by the employer. The file will be documented appropriately.

#### ***Some Types of Military Pay***

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

### **Types of Earned Income Not Counted in Annual Income**

#### ***Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]***

This type of income (including gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting longer than 180 days [PIH Notice 2009-19]

#### **LHA Policy**

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed. If a pattern is established and income can be reliably predicted, the income will be included.

#### ***Children's Earnings [24 CFR 5.609(c)(1)]***

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income. (See Eligibility chapter for a definition of *foster children*.)

#### ***Certain Earned Income of Full-Time Students***

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

#### ***Income of a Live-in Aide***

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

#### ***Income Earned under Certain Federal Programs [24 CFR 5.609(c)(17)]***

Income from some federal programs is specifically excluded from consideration as income, including:

Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)

Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) Awards under the federal work-study program (20 U.S.C. 1087 uu)

Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f)) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))

Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

#### ***Resident Service Stipend [24 CFR 5.600(c)(8)(iv)]***

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for LHA, on a part-time basis, that enhances the quality of life in the development. Such services may include, but

are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of LHA's governing board. No resident may receive more than one such stipend during the same period of time.

***State and Local Employment Training Program (Example: Office and Maintenance Skills Training Program)***

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

**LHA Policy**

LHA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period of time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

LHA defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, LHA will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with LHA's interim reporting requirements (see chapter on reexaminations).

***HUD-Funded Training Programs***

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

**LHA Policy**

To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs.

***Earned Income Tax Credit.*** Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

***Earned Income Disallowance.*** The earned income disallowance is discussed in section 6-IE below.

**6-IE. EARNED INCOME DISALLOWANCE [24 CFR 960.255]**

The earned income disallowance (EID) encourages people to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 960.255 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

**Eligibility**

This disallowance applies only to individuals in families already participating in the public housing program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

Employment of a family member who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.

Increased earnings by a family member whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].

New employment or increased earnings by a family member who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as onetime payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

#### **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

#### LHA Policy

LHA defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

#### **Initial 12-Month Exclusion**

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

#### LHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

#### **Second 12-Month Exclusion and Phase-In**

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

#### **Lifetime Limitation**

The Earned Income Disallowance (EID) is the exclusion from the calculation of the family's income, the income increase attributable to new employment or increased earnings, over the income received prior to qualifying for the disallowance. LHA has included in this ACOP the Final Rule of the Streamlining Administrative Regulations effective April 7, 2016, regarding the reduction EID benefits to a lifetime limit over a straight 24-month period beginning on or after May 9, 2016 (24 CFR § 960.255). This change does not apply to residents receiving EID prior the effective date of this regulation.

#### LHA Policy

During the 24-month eligibility period, LHA will conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

#### **Individual Savings Accounts [24 CFR 960.255(d)]**

#### LHA Policy

**LHA chooses not to establish a system of individual savings accounts (ISAs) for families who qualify for the EID.**

**The following rules pertaining to ISAs do not apply to LHA.**

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A qualified family paying income-based rent may choose an ISA instead of being given the EID. The PHA must advise the family that the ISA option is available. Families who choose the ISA will pay the higher rent and the PHA will deposit the difference between the higher rent and the EID rent in the savings account.

Amounts deposited to ISAs may only be withdrawn for the following reasons:

Because the family is purchasing a home

To pay education costs of family members

Because the family is moving out of public or assisted housing

To pay any other expenses the PHA authorizes to promote economic self-sufficiency

The PHA is required to maintain ISAs in interest bearing accounts, for which the family is credited with interest earned. The PHA may not charge the family a fee for maintaining the account.

At least once each year the PHA must provide the family with a statement of the balance in their account, including any interest earned, if required by state law.

When applicable, the PHA will provide the family with a statement of the balance in their account, including any interest earned, annually and upon request when the family makes withdrawals from the account.

If the family moves out of public housing, the PHA must return the balance in the family's ISA, less any amounts the family owes the PHA.

#### **6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]**

Annual income includes "the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family" [24 CFR 5.609(b)(2)].

#### **Business Expenses**

Net income is "gross income less business expense" [HCV GB, p. 5-19].

#### LHA Policy

To determine business expenses that may be deducted from gross income, LHA will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

#### **Business Expansion**

HUD regulations do not permit LHA to deduct from gross income expenses for business expansion.

#### LHA Policy

*Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

#### **Capital Indebtedness**

HUD regulations do not permit LHA to deduct from gross income the amortization of capital indebtedness.

#### LHA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means LHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

#### **Negative Business Income**

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

#### **Withdrawal of Cash or Assets from a Business**

HUD regulations require LHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

#### LHA Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of a tenant family provided an up-front loan of \$2,000 to help a business get started, LHA will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

#### **Co-owned Businesses**

#### LHA Policy

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

### **6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]**

#### **Overview**

There is no asset limitation for participation in the public housing program. However, HUD requires that LHA include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, LHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b) (3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

#### **General Policies**

#### ***Income from Assets***

LHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes LHA to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or

(3) LHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, LHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### LHA Policy

Per PIH Notice 2013-3 LHA will accept a family's self-declaration of the amount of assets less than \$5,000 and the amount of income expected to be received from those assets. LHA's reexamination documentation, which is signed by all adult family members, can serve as the declaration. Where the family has net family assets equal to or less than \$5,000, LHA does not need to request supporting documentation (e.g. bank statements) for the family to confirm the assets or the amount of income expected to be received from those assets.

Where the family has net family assets in excess of \$5,000, LHA must obtain supporting documentation to confirm assets. Any time current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to LHA to show why the asset income determination does not represent the family's anticipated asset income.

#### ***Valuing Assets***

The calculation of asset income sometimes requires LHA to make a distinction between an asset's market value and its cash value.

The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).

The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

LHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28 and PH Occ GB, p. 121].

***Lump-Sum Receipts***

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

***Imputing Income from Assets [24 CFR 5.609(b)(3)]***

When net family assets are \$5,000 or less, LHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, LHA will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate.

***Determining Actual Anticipated Income from Assets***

It may or may not be necessary for LHA to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

***Withdrawal of Cash or Liquidation of Investments***

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

***Jointly Owned Assets***

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

LHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, LHA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, LHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, LHA will prorate the asset evenly among all owners.

***Assets Disposed Of for Less than Fair Market Value [24 CFR 5.603(b)]***

HUD regulations require LHA to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

***Minimum Threshold***

LHA may set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

LHA Policy

LHA will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual re-certifications; the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

#### *Separation or Divorce*

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

#### LHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

#### *Foreclosure or Bankruptcy*

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

#### *Family Declaration*

#### LHA Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. LHA may verify the value of the assets disposed of if other information available to LHA does not appear to agree with the information reported by the family.

#### **Types of Assets**

#### ***Checking and Savings Accounts***

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

#### LHA Policy

In determining the value of a checking account, LHA will use the average monthly balance for the last three months.

In determining the value of a savings account, LHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, LHA will multiply the value of the account by the current rate of interest paid on the account.

#### ***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds***

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

#### LHA Policy

In determining the market value of an investment account, LHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), LHA will calculate asset income based on the earnings for the most recent reporting period.

#### ***Equity in Real Property or Other Capital Investments***



Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25 and PH, p. 121].

LHA Policy

In determining the equity, LHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

LHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the PHA will use the basic loan balance information to deduct from the market value in the equity calculation.

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]

Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.

Interests in Indian Trust lands [24 CFR 5.603(b)]

Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25] A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

The Housing Authority must also deduct from the equity the reasonable costs for converting the asset to cash.

Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

LHA Policy

For the purposes of calculating expenses to convert to cash for real property, LHA will use ten percent of the market value of the home.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

LHA Policy

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless LHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

**Trusts**

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

*Revocable Trusts*

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

*Non-revocable Trusts*

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

**Retirement Accounts**

*Company Retirement/Pension Accounts*

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, LHA must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 526], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

#### *IRA, Keogh, and Similar Retirement Savings Accounts*

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

#### ***Personal Property***

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

#### LHA Policy

In determining the value of personal property held as an investment, LHA will use the family's estimate of the value. LHA may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

#### LHA Policy

Necessary personal property consists of only those items not held as an investment. It may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

#### ***Life Insurance***

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### **6-I.H. PERIODIC PAYMENTS**

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

#### **Periodic Payments Included in Annual Income**

Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].

Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

#### **Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

#### LHA Policy

When a delayed-start payment is received and reported during the period in which LHA is processing an annual reexamination, LHA will adjust the tenant rent retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with LHA. See the chapter on reexaminations for information about a family's obligation to report lump-sum receipts between annual reexaminations.

#### **Treatment of Overpayment Deductions from Social Security Benefits**

The PHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the PHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

#### **Periodic Payments Excluded from Annual Income**

Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship care payments are considered equivalent to foster care payments and are also excluded from annual income [Notice PIH2012-1].

#### LHA Policy

LHA will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b) (4)].

Lump sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

### **6-1.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

### **6-1.J. WELFARE ASSISTANCE**

#### **Overview**

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

#### **Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]**

LHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was a public housing resident at the time the sanction was imposed.

***Covered Families***

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, LHA must include in annual income “imputed” welfare income. LHA must request that the welfare agency inform LHA when the benefits of a public housing resident are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

For special procedures related to grievance hearings based upon LHA’s denial of a family’s request to lower rent when the family experiences a welfare benefit reduction, see Chapter 14, Grievances and Appeals.

***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

**6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]**

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with a tenant family.

***Alimony and Child Support***

LHA must count alimony or child support amounts awarded as part of a divorce or separation agreement.

**LHA Policy**

LHA will count court-awarded amounts for alimony and child support unless LHA verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

***Regular Contributions or Gifts***

LHA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with a tenant family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

**LHA Policy**

Examples of regular contributions include: (1) regular payment of a family’s bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) “in-kind” contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by LHA. For contributions that may vary from month to month (e.g., utility payments), LHA will include an average amount based upon past history.

#### **6-1.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

Reimbursement of medical expenses [24 CFR 5.609(c) (4)]

The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c) (6)].

##### LHA Policy

Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income. Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]

Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]

Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c) (10)]

Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c) (12)]

Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c) (15)]

Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

Amounts specifically excluded by any other federal statute [24 CFR 5.609(c) (17)]. HUD publishes an updated list of these exclusions periodically. It includes:

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)

(c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))

(d) Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))

(f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)

(g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)

(h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)

(i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu)

(j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))

- (k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.) (1) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

**PART II: ADJUSTED INCOME**

**6-II.A. INTRODUCTION Overview**

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family’s adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity (PHA) must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (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:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a 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; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7, Verifications.

**Anticipating Expenses**

LHA Policy

Generally, LHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), LHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, LHA will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. LHA may require the family to provide documentation of payments made in the preceding year.

### **6-II.B. DEPENDENT DEDUCTION**

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

### **6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

### **6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income.

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

#### **Definition of *Medical Expenses***

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

#### LHA Policy

**(a) Medical Expenses Deduction.** A deduction of unreimbursed medical expenses, including insurance premiums, anticipated for the period for which annual income is computed.

Medical expenses include but are not limited to: services of physicians and other health care professionals, services of health care facilities, insurance premiums (including the cost of Medicare), prescription and non-prescription medicines (as recommended by a medical practitioner as treatment for a specific medical condition diagnosed by a physician), transportation to and from treatment, dental expenses, eyeglasses, hearing aids and batteries, attendant care (unrelated to employment of family members), and payments on accumulated medical bills. Additional guidance on acceptable medical deductions may be sought from information provided by the US Department of Treasury/IRS Publication 502. To be considered by LHA for the purpose of determining a deduction from income the expenses claimed must be verifiable.

**(i) For elderly families without disability expenses:** the amount of the deduction shall equal total medical expenses less three percent of annual income.

**(ii) For elderly families with both disability and medical expenses:** the amount of the deduction is calculated as described in paragraph 1.(c)(ii) above.

**(b) Elderly/Disabled Household Exemption.** An exemption of \$400 per household.

#### **Families That Qualify for Both Medical and Disability Assistance Expenses**

#### LHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, LHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]**

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work,

(2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

**Earned Income Limit on the Disability Assistance Expense Deduction**

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of “earned income received by family members who are 18 years of age or older and who are able to work” because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

LHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, LHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When LHA determines that the disability assistance expenses enable more than one family member to work, the disability assistance expenses will be capped by the sum of the family members’ incomes [PH Occ. GB, p. 124].

**Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *PH Occupancy Guidebook* as follows: “Auxiliary apparatus: Including wheelchairs, walkers, scooters, reading devices for persons with visual disabilities, equipment added to cars and vans to permit their use by the family member with a disability, or service animals” [PH Occ. GB, p. 124], but only if these items are directly related to permitting the disabled person or other family member to work [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

**Eligible Auxiliary Apparatus**

LHA Policy

Expenses incurred for maintaining or repairing an auxiliary apparatus is eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

**Eligible Attendant Care**

The family determines the type of attendant care that is appropriate for the person with disabilities.

LHA Policy

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, LHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated.

Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

**Payments to Family Members**

No disability expenses may be deducted for payments to a member of a tenant family [23 CFR 5.603(b)].

However, expenses paid to a relative who is not a member of the tenant family may be deducted if they are reimbursed by an outside source.



### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### LHA Policy

LHA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, LHA will collect information from organizations that provide services and support to persons with disabilities. A family may present, and LHA will consider, the family's justification for costs that exceed typical costs in the area.

### **Families That Qualify for Both Medical and Disability Assistance Expenses**

#### LHA Policy

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, LHA will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **6-II.F. CHILD CARE EXPENSE DEDUCTION**

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family's household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family's household are included when determining the family's child care expenses.

#### **Qualifying for the Deduction**

##### ***Determining Who Is Enabled to Pursue an Eligible Activity***

#### LHA Policy

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family's request, LHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

##### ***Seeking Work***

#### LHA Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by LHA.

##### ***Furthering Education***

#### LHA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

##### ***Being Gainfully Employed***

#### LHA Policy

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full-or part-time) for which a family member is compensated.

**Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person's earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

LHA must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

LHA Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, LHA generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

**Eligible Child Care Expenses**

The type of care to be provided is determined by the tenant family. LHA may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

**Allowable Child Care Activities**

LHA Policy

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family's unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, LHA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

**Necessary and Reasonable Costs**

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

LHA Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class. To establish the reasonableness of child care costs, LHA will use the schedule of child care costs from the local welfare agency. Families may present, and LHA will consider, justification for costs that exceed typical costs in the area.

## **6-II.G. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)]**

Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If LHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ. GB, p. 128].

The *Form HUD-50058 Instruction Booklet* states that the maximum allowable amount for total permissive deductions is less than \$90,000 per year.

### LHA Policy

LHA has opted not to use permissive deductions.

## **PART III: CALCULATING RENT**

### **6-III.A. OVERVIEW OF INCOME-BASED RENT CALCULATIONS**

The first step in calculating income-based rent is to determine each family's total tenant payment (TTP). Then, if the family is occupying a unit that has tenant-paid utilities, the utility allowance is subtracted from the TTP. The result of this calculation, if a positive number, is the tenant rent. If the TTP is less than the utility allowance, the result of this calculation is a negative number, and is called the utility reimbursement, which may be paid to the family or directly to the utility company by LHA.

#### **TTP Formula [24 CFR 5.628]**

HUD regulations specify the formula for calculating the total tenant payment (TTP) for a tenant family. TTP is the highest of the following amounts, rounded to the nearest dollar:

30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)

10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)

The welfare rent (in as-paid states only)

A minimum rent between \$0 and \$50 that is established by LHA

LHA has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

#### **Welfare Rent [24 CFR 5.628]**

### LHA Policy

Welfare rent does not apply in this locality. **Minimum Rent [24 CFR 5.630]**

### LHA Policy

The minimum rent for all localities is \$50.

#### **Optional Changes to Income-Based Rents [24 CFR 960.253(c) (2) and PH Occ. GB, pp. 131-134]**

PHAs have been given very broad flexibility to establish their own, unique rent calculation systems as long as the rent produced is not higher than that calculated using the TTP and mandatory deductions. At the discretion of LHA, rent policies may structure a system that uses combinations of permissive deductions, escrow accounts, income-based rents, and the required flat and minimum rents.

LHA's minimum rent and rent choice policies still apply to affected families. Utility allowances are applied to LHA designed income-based rents in the same manner as they are applied to the regulatory income-based rents. The choices are limited only by the requirement that the method used not produce a TTP or tenant rent greater than the TTP or tenant rent produced under the regulatory formula.

### LHA Policy

LHA chooses not to adopt optional changes to income-based rents.

#### **Ceiling Rents [24 CFR 960.253 (c)(2) and (d)]**

Ceiling rents are used to cap income-based rents. They are part of the income-based formula. If the calculated TTP exceeds the ceiling rent for the unit, the ceiling rent is used to calculate tenant rent (ceiling rent/TTP minus utility allowance). Increases in income do not affect the family since the rent is capped. The use of ceiling rents fosters upward mobility and income mixing.

Because of the mandatory use of flat rents, the primary function of ceiling rents now is to assist families who cannot switch back to flat rent between annual reexaminations and would otherwise be paying an income-based tenant rent that is higher than the flat rent.

Ceiling rents must be set to the level required for flat rents (which will require the addition of the utility allowance to the flat rent for properties with tenant-paid utilities) [PH Occ. GB, p. 135].

#### LHA Policy

LHA chooses not to use ceiling rents.

#### **Utility Reimbursement [24 CFR 960.253(c) (3)]**

Utility reimbursement occurs when any applicable utility allowance for tenant-paid utilities exceeds the TTP. HUD permits LHA to pay the reimbursement to the family or directly to the utility provider.

#### LHA Policy

LHA will make utility reimbursements to the family. Upon agreement with the resident, the utility reimbursement may be applied toward any outstanding charges owed by the resident to the Housing Authority.

### **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

#### LHA Policy

The financial hardship rules do not apply in this jurisdiction because LHA has established a minimum rent of \$50.

### **6-III.C. UTILITY ALLOWANCES [24 CFR 965, Subpart E]**

#### **Overview**

Utility allowances are provided to families paying income-based rents when the cost of utilities is not included in the rent. When determining a family's income-based rent, LHA must use the utility allowance applicable to the type of dwelling unit leased by the family.

For policies on establishing and updating utility allowances, see Chapter 16.

#### **Reasonable Accommodation [24 CFR 8]**

On request from a family, PHAs must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family with a disability [PH Occ. GB, p. 172].

Residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ. GB, p. 172].

See Chapter 2 for policies related to reasonable accommodations.

#### **Utility Allowance Revisions [24 CFR 965.507]**

LHA must review its schedule of utility allowances each year. Between annual reviews, LHA must revise the utility allowance schedule if there is a rate change that by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which such allowances were based. Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective [PH Occ. GB, p. 171]. The tenant rent calculations must reflect any changes in LHA's utility allowance schedule [24 CFR 960.253(c) (3)].

#### LHA Policy

Unless LHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted. LHA will not do a re-exam solely for purposes of implementing a new utility allowance.

### **6-III.D. PRORATED RENT FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. LHA must prorate the assistance provided to a mixed family. LHA will first determine TTP as if all family members were eligible and then prorate the rent based upon the number of family members that actually are eligible. To do this, LHA must:

(1) Subtract the TTP from a maximum rent applicable to the unit. The result is the maximum subsidy for which

the family could qualify if all members were eligible.

(2) Divide the family maximum subsidy by the number of persons in the family to determine the maximum subsidy per each family member who is eligible (member maximum subsidy).

(3) Multiply the member maximum subsidy by the number of eligible family members.

(4) Subtract the subsidy calculated in the last step from the maximum rent. This is the prorated TTP.

(5) Subtract the utility allowance for the unit from the prorated TTP. This is the prorated rent for the mixed family. LHA Policy Revised public housing maximum rents will be applied to a family's rent calculation at the first annual reexamination after the revision is adopted. For policies related to the establishment of the public housing maximum rent see Chapter 16.

### **6-III.E. FLAT RENTS AND FAMILY CHOICE IN RENTS [24 CFR 960.253]**

#### **Flat Rents [24 CFR 960.253(b)]**

The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

There is no utility allowance or reimbursement with flat rents. When the family elects to pay the flat rent, the flat rent amount quoted to the family by LHA is the amount the family pays. Changes in family income, expenses, or composition will not affect the flat rent amount because it is outside the income-based formula.

Policies related to the reexamination of families paying flat rent are contained in Chapter 9, and policies related to the establishment and reviews of flat rents are contained in Chapter 16.

#### **Family Choice in Rents [24 CFR 960.253(a) and (e)]**

Once each year, LHA must offer families the choice between a flat rent and an income-based rent. The family may not be offered this choice more than once a year. LHA must document that flat rents were offered to families under the methods used to determine flat rents for LHA.

#### LHA Policy

The annual PHA offer to a family of the choice between flat and income-based rent will be conducted upon admission and upon each subsequent annual reexamination.

LHA will enter the projected income-based rent (TTP minus utility allowance) and the flat rent for the unit on the Choice of Rent form. The family will select the rent and sign the form. The form is retained in the tenant file. LHA must provide sufficient information for families to make an informed choice. This information must include LHA's policy on switching from flat rent to income-based rent due to financial hardship and the dollar amount of the rent under each option. However, if the family chose the flat rent for the previous year LHA is required to provide an income-based rent amount only in the year that a reexamination of income is conducted or if the family specifically requests it and submits updated income information.

#### **Switching from Flat Rent to Income-Based Rent Due to Hardship [24 CFR 960.253(f)]**

A family can opt to switch from flat rent to income-based rent at any time if they are unable to pay the flat rent due to financial hardship. If LHA determines that a financial hardship exists, LHA must immediately allow the family to switch from flat rent to the income-based rent.

#### LHA Policy

Upon determination by LHA that a financial hardship exists, LHA will allow a family to switch from flat rent to income-based rent effective the first of the month following the family's request. A family making this switch would remain on income-based rent until the next annual reexamination.

Reasons for financial hardship include:

The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance

The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items.

Such other situations determined by LHA to be appropriate LHA Policy LHA considers payment of flat rent to be a financial hardship whenever the switch to income-based rent would be lower than the flat rent [PH Occ. GB, p. 137].

### **Change in Flat Rents**

#### LHA Policy

Changes to flat rents, up or down, will not affect families paying flat rent until their next annual flat rent offer, at which time the family will be given the choice of switching back to income-based rent or of remaining on flat rent at the current (most recently adjusted) flat rent for their unit [PH Occ. GB, pp. 137-138].

### **Phasing In Flat Rents [Notice PIH 2017-23; 24 CFR 960.253(b)]**

When new flat rents requirements were implemented in 2014, HUD limited the increase for existing residents paying flat rent at that time to no more than 35 percent of the current tenant rent per year. In some cases, this meant that some residents had or will have their flat rents phased-in at the time of their annual recertification. To do this, PHAs conduct a flat rent impact analysis to determine whether a phase-in is or was necessary. For families whose flat rent is being phased-in, the PHA must multiply the family's current rent amount by 1.35 and compare the result to the flat rent under the PHA's policies. Families who have subsequently been admitted to the program or have subsequently selected flat rent will not experience a phase-in. Notice PIH 2017-23 requires that flat rents must be phased in at the full 35 percent per year. PHAs do not have the option of phasing in flat rent increases at less than 35 percent per year.

**Example:** A family was paying a flat rent of \$500 per month. At their annual recertification, the PHA has increased the flat rent for their unit size to comply with the new requirements to \$700. The PHA conducted a flat rent impact analysis as follows:

$$\$500 \times 1.35 = \$675$$

Since the PHA's increased flat rent of \$700 resulted in a rent increase of more than 35 percent, the PHA offered the family the choice to pay either \$675 per month or an income-based rent. The flat rent increase was phased in. At their next annual recertification in November 2015, the PHA will again multiply the family's current flat rent by 1.35 and compare the results to the PHA's current flat rent.

### **Flat Rents and Earned Income Disallowance [A&O FAQs]**

Because the EID is a function of income-based rents, a family paying flat rent cannot qualify for the EID even if a family member experiences an event that would qualify the family for the EID. If the family later chooses to pay income-based rent, they would only qualify for the EID if a new qualifying event occurred.

A family currently paying flat rent that previously qualified for the EID while paying income-based rent and is currently within their 48 month period would have the 12 cumulative months of full (100 percent) and phase-in (50 percent) exclusion continue while paying flat rent as long as the employment that is the subject of the exclusion continues, and the 48-month lifetime limit would continue uninterrupted. A family paying flat rent could therefore see a family member's 48-month lifetime limit expire while the family is paying flat rent.

### **Flat Rents and Mixed Families [A&O FAQs]**

Mixed families electing to pay flat rent must first have a flat rent worksheet completed to see if the flat rent must be prorated. The worksheet is located in Appendix III of the *Form HUD-50058 Instruction Booklet*.

If the flat rent is greater than or equal to the public housing maximum rent, there is no proration of flat rent and the family pays the flat rent for the unit.

If the flat rent is less than the maximum rent, the worksheet will calculate a prorated flat rent. The mixed family will pay the prorated flat rent.

## **EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**

### **24 CFR 5.609**

(a) Annual income means all amounts, monetary or not, which: \_\_\_\_\_

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this SECTION?
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

**(b) Annual income includes, but is not limited to:**

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b) (2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c) (3) of this section);
- (6) Welfare assistance payments.
  - (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments: (A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and (B) Are not otherwise excluded under paragraph (c) of this section.
  - (ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: (A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus (B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
- (7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;
- (8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c) (7) of this section)
- (9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

**HHS DEFINITION OF "ASSISTANCE"**

**45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance" mean?**

- (a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).
- (2) It includes such benefits even when they are:
  - (i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and
  - (ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).
- (3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.
- (b) [The definition of "assistance"] excludes:
  - (1) Non-recurrent, short-term benefits that: (i) Are designed to deal with a specific crisis situation or episode of need; (ii) Are not intended to meet recurrent or ongoing needs; and (iii) Will not extend beyond four months.
  - (2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);
  - (3) Supportive services such as child care and transportation provided to families who are employed;
  - (4) Refundable earned income tax credits;
  - (5) Contributions to, and distributions from, Individual Development Accounts;
  - (6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and
  - (7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance



## **EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS**

### **24 CFR 5.609**

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
  - (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
  - (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
  - (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
  - (5) Income of a live-in aide, as defined in Sec. 5.403;
  - (6) Subject to paragraph (b) (9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
  - (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
  - (8) (i) Amounts received under training programs funded by HUD;
  - (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS); (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
  - (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
  - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
  - (9) Temporary, nonrecurring or sporadic income (including gifts);
  - (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
  - (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
  - (12) Adoption assistance payments in excess of \$480 per adopted child;
  - (13) [Reserved]
  - (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
  - (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
  - (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
  - (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following list of benefits that qualify for this exclusion.]
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Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
- b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
- c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
- g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L-94-540, 90 Stat. 2503-04);
- h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));
- k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));
- o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));
- q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

## **EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

### **24 CFR 5.603(b) Net Family Assets**

- (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.
- (2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.
- (3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.
- (4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

## **EXHIBIT 6-4: EARNED INCOME DISALLOWANCE**

### **24 CFR 960.255 Self-sufficiency incentive—Disallowance of increase in annual income.**

(a) *Definitions.* The following definitions apply for purposes of this section.

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in public housing:

- (i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;
- (ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or
- (iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not 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.

(b) *Disallowance of increase in annual income.*

- (1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.
- (2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.
- (3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

- (1) The PHA must advise the family that the savings account option is available;
- (2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;
- (3) Amounts deposited in a savings account may be withdrawn only for the purpose of:
  - (i) Purchasing a home;
  - (ii) Paying education costs of family members;
  - (iii) Moving out of public or assisted housing; or
  - (iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;
- (4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;
- (5) At least annually the PHA must provide the family with a report on the status of the account; and
- (6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA

#### **EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

##### **24 CFR 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) *Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefits reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency: (i) at expiration of a lifetime or other time limit on the payment of welfare benefits; (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or (iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any

subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

**(d) Review of PHA decision.**

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55 (e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

**(e) PHA relation with welfare agency.**

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## **Chapter 7 VERIFICATION**

[24 CFR 960.259, 24 CFR 5.230, Notice PIH 2017-12]

### **INTRODUCTION**

LHA must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and tenants must cooperate with the verification process as a condition of receiving assistance. LHA must not pass on the cost of verification to the family.

LHA will follow the verification guidance provided by HUD in Notice PIH 2017-12 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary LHA policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV). Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies established by LHA.

## **PART I: GENERAL VERIFICATION REQUIREMENTS**

### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 960.259, 24 CFR 5.230]**

The family must supply any information that LHA or HUD determines is necessary to the administration of the program and must consent to LHA verification of that information [24 CFR 960.259(a)(1)].

#### LHA Policy

Per PIH Notice 2013-03, LHA is opting to streamline reexaminations of income for elderly families and disabled families when 100 percent of the family's income consists of fixed income. In a streamlined examination, LHA will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount. For purposes of this policy, the term "fixed income" includes some income from: Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI); Federal, State, local and private pension plans; and Other periodic payments received from annuities, insurance policies, retirement funds, disability benefits, and other similar types of periodic receipt that are of substantially the same amounts from year to year.

#### **Consent Forms**

It is required that all adult applicants and tenants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and LHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, LHA will deny admission to applicants and terminate the lease of tenants. The family may request a hearing in accordance with LHA's grievance procedures.

### **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

**HUD's Verification Hierarchy [Notice PIH 2017-12]** HUD authorizes LHA to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires LHA to use the most reliable form of verification that is available and to document the reasons when LHA uses a lesser form of verification.

LHA Policy In order of priority, the forms of verification that LHA will use are:

1. Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
2. Up-front Income Verification (UIV) using a non-HUD system Written Third Party Verification (may be provided by applicant or resident)
3. Written Third-party Verification Form
4. Oral Third-party Verification
5. Self-Certification

Each of the verification methods is discussed in subsequent sections below.

#### **Requirements for Acceptable Documents**

##### LHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to LHA. The documents must not be damaged, altered or in any way illegible. Print-outs from web pages are considered original documents.

LHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to LHA and must be signed in the presence of a LHA representative or LHA notary public.

#### **File Documentation**

LHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that LHA has followed all of the verification policies set forth in this ACOP. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

#### LHA Policy

LHA will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing the adjusted income or income-based rent determination

When LHA is unable to obtain third-party verification, LHA will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH ~~2010-19~~ 2017-12].

### **7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to LHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to LHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until LHA has independently verified the UIV information and the family has been granted the opportunity to contest any adverse findings through LHA's informal review/hearing processes. (For more on UIV and income projection, see section 6-I.C.)

#### **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for resident families. HUD requires LHA to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

#### ***EIV Income Reports***

The data shown on income reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

#### LHA Policy

LHA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in resident files with the applicable annual or interim reexamination documents.

When LHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

#### ***EIV Discrepancy Reports***

The EIV discrepancy report is a tool for identifying families that may have concealed or underreported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 and 30 months old at the time reports are generated.

Families that have not concealed or underreported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.

Income discrepancies may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

### LHA Policy

LHA will generate the Income Discrepancy Report at least once every 6 months.

When LHA determines that a resident appearing on the Income Discrepancy Report has not concealed or underreported income, the resident's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, residents appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

LHA will review the EIV discrepancy tab during processing of annual and interim reexaminations.

When it appears that a family may have concealed or underreported income, LHA will request independent written third-party verification of the income in question.

When LHA determines through file review and independent third-party verification that a family has concealed or underreported income, corrective action will be taken pursuant to the policies in Chapter 15, Program Integrity.

### ***EIV Identity Verification***

The EIV system verifies resident identities against Social Security Administration (SSA) records. These records are compared to Public and Indian Housing Information Center (PIC) data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2017-12].

When identity verification for a resident fails, a message will be displayed within the EIV system and no income information will be displayed.

### LHA Policy

LHA will identify residents whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis. LHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the tenant. When LHA determines that discrepancies exist as a result of LHA errors, such as spelling errors or incorrect birth dates, it will correct the errors promptly.

### **Upfront Income Verification Using Non-HUD Systems (Optional)**

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

LHA Policy LHA will inform all applicants and residents of its use of the following UIV resources during the admission and reexamination process:

HUD's EIV system

## **7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to LHA by the family. If written third-party verification is not available, LHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

### **Written Third-Party Verification [Notice PIH 2017-12]**

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

LHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

LHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

### LHA Policy

Third-party documents provided by the family must be dated generally within 60 days of LHA request date.

If LHA determines that third-party documents provided by the family are not acceptable, LHA will explain the reason to the family and request additional documentation.

As verification of earned income, LHA will request pay stubs covering the 60-day period prior to LHA's request.



### **Written Third-Party Verification Form**

When upfront verification is not available and the family is unable to provide written third-party documents, LHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

PHAs may mail, fax, or e-mail third-party written verification form requests to third-party sources.

#### LHA Policy

LHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by LHA.

### **Oral Third-Party Verification [Notice PIH 2017-12]**

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

PHAs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

#### LHA Policy

In collecting third-party oral verification, LHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification LHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

### **When Third-Party Verification is Not Required [Notice PIH 2017-12]**

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

#### LHA Policy

If the family cannot provide original documents, LHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost.

### ***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

### ***Imputed Assets***

LHA may accept a self-certification from the family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

#### LHA Policy

LHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

7-I.E.	Verification of Legal Identity for Adults	Verification of Legal Identity for Children	SELF-
	Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicle identification card U.S. military discharge (DD 214) U.S. passport Employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID School records	

**CERTIFICATION**

Self-certification, or “tenant declaration,” is used as a last resort when LHA is unable to obtain third-party verification. When LHA relies on a tenant declaration for verification of income, assets, or expenses, the family’s file must be documented to explain why third-party verification was not available.

LHA Policy

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to LHA.

LHA may require a family to certify that a family member does not receive a particular type of income or benefit. The self-certification must be made in a format acceptable to LHA and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a LHA representative or LHA notary public.

LHA may accept a family's declaration of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets. Where the family has less than \$5,000 in assets, the LHA does not need supporting documentation (e.g. bank statements) from the family to confirm the assets or the income from those assets. [PIH Notice 2013-03]

**PART II: VERIFYING FAMILY INFORMATION**

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

LHA Policy

LHA will require families to furnish verification of legal identity for each household member.

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at LHA’s discretion, a third party who knows the person may attest to the person’s identity. The certification must be provided in a format acceptable to LHA and be signed in the presence of a LHA representative or LHA notary public. Legal identity will be verified on an as needed basis.

**7-I.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2012-10]**

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include, existing residents who were at least 62 years of age as of April 30, 2010, and had not previously disclosed an SSN.

LHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

LHA may only reject documentation of an SSN provided by an applicant or resident if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

LHA Policy

LHA will explain to the applicant or resident the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to LHA within 90 days.

When the resident requests to add a new household member the resident must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. LHA may not add the new household member until such documentation is provided.

When a resident requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the resident must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90day extension will be granted if LHA determines that the resident's failure to comply was due to unforeseen circumstances and was outside of the resident's control. During the period LHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

#### LHA Policy

LHA will grant one additional 90-day extension if needed for reasons beyond the resident's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously-assisted occupancy.

#### LHA Policy

LHA will verify each disclosed SSN by:

- Obtaining documentation from applicants and residents that is acceptable as evidence of social security numbers,
- Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder
- Once the individual's verification status is classified as "verified," LHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

#### LHA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, LHA will remove and destroy copies of documentation accepted as evidence of social security numbers.

### **7-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### LHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, LHA will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

### **7-II.D. FAMILY RELATIONSHIPS**

Applicants and tenants are required to identify the relationship of each household member to the head of household.

Definitions of the primary household relationships are provided in the Eligibility chapter.

#### LHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance.

Certification by the head of household normally is sufficient verification of family relationships.

#### **Marriage**

#### LHA Policy

Certification by the head of household is normally sufficient verification. If LHA has reasonable doubts about a marital relationship, LHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

## **Separation or Divorce**

### LHA Policy

Certification by the head of household is normally sufficient verification. If LHA has reasonable doubts about a separation or divorce, LHA will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

## **Absence of Adult Member**

### LHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

## **Foster Children and Foster Adults**

### LHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

## **7-II.E. VERIFICATION OF STUDENT STATUS**

### LHA Policy

LHA requires families to provide information about the student status of all students who are 18 years of age or older.

This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or co-head, or

The family claims a child care deduction to enable a family member to further his or her education.

## **7-II.F. DOCUMENTATION OF DISABILITY**

LHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income.

LHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. LHA may not

inquire about a person's diagnosis or details of treatment for a disability or medical condition. If LHA receives a verification document that provides such information, LHA will not place this information in the tenant file. Under no circumstances will LHA request a resident's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' Web site at [www.FL.gov](http://www.FL.gov).

LHA may make the following inquiries, provided it makes them of all applicants, whether or not they are persons with disabilities:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiry about whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiry about whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

## **Family Members Receiving SSA Disability Benefits**

Verification of receipt of disability benefits from the Social Security Administration (SSA) is sufficient for verification of disability for the purpose of qualification for waiting list preferences or certain income disallowances and deductions.

### LHA Policy

For family members claiming disability who receive disability payments from the SSA, LHA will attempt to obtain information about disability benefits through HUD's Enterprise Income Verification (EIV) system. If documentation is not available through HUD's EIV system, LHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If a family member is unable to provide the document, LHA will ask the family to obtain a benefit verification letter either by calling SSA at 1-800-772-1213 or by

requesting one from [www.ssa.gov](http://www.ssa.gov). Once the family receives the benefit verification letter, it will be required to provide the letter to LHA.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403, necessary to qualify for waiting list preferences or certain income disallowances and deductions.

#### LHA Policy

For family members claiming disability who do not receive SSI or other disability payments from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. See the Eligibility chapter for detailed discussion of eligibility requirements. This chapter (7) discusses HUD and LHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy [24 CFR 5.508(g)(5)]

### **Citizens and Nationals**

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

LHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### LHA Policy

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless LHA receives information indicating that an individual's declaration may not be accurate.

### **Eligible Immigrants**

#### ***Documents Required***

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

#### ***LHA Verification*** [HCV GB, pp 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this ACOP. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, LHA must verify immigration status with the U.S. Citizenship and Immigration Services (USCIS).

LHA will follow all USCIS protocols for verification of eligible immigration status.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

LHA must verify any preferences claimed by an applicant.

#### LHA Policy

LHA offers a preference for working families, described in Section 4-III.B.

LHA may verify that the family qualifies for the working family preference based on the family's submission of the working member's most recent paycheck stub indicating that the working member works at least 30 hours per week. The paycheck stub must have been issued to the working member within the last thirty days.

LHA may also seek third party verification from the employer of the head, spouse, co-head or sole member of a family requesting a preference as a working family.

### **PART III: VERIFYING INCOME AND ASSETS**

Chapter 6, Part I of this ACOP describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides LHA policies that supplement the general verification procedures specified in Part I of this chapter.

#### **7-III.A. EARNED INCOME**

##### **Tips**

##### LHA Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

#### **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

##### LHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

LHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination LHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, LHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months LHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

#### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

##### **Social Security/SSI Benefits**

##### LHA Policy

To verify the SS/SSI benefits of applicants, LHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member who receives social security benefits. If a family member is unable to provide the document, LHA will help the applicant request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the original benefit verification letter, it will be required to provide the letter to LHA.

To verify the SS/SSI benefits of residents, LHA will obtain information about social security/SSI benefits through HUD's EIV system, and confirm with the resident(s) that the current listed benefit amount is correct. If the resident disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, LHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If a family member is unable to provide the document, LHA will help the resident request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the family has received the benefit verification letter, it will be required to provide the letter to LHA.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

#### LHA Policy

The way LHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order.

Copy of the receipts and/or payment stubs for the 60 days prior to LHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

**Note:** Families are not required to undertake independent enforcement action.

### **7-III.E. ASSETS AND INCOME FROM ASSETS-Assets Disposed of for Less than Fair Market Value**

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. LHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### LHA Policy

LHA will verify the value of assets disposed of only if:

LHA does not already have a reasonable estimation of its value from previously collected information, or The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly resident reported a \$10,000 certificate of deposit at the last annual reexamination and LHA verified this amount. Now the person reports that she has given this \$10,000 to her son. LHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, LHA will verify the value of this asset.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### LHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, LHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

### **7-III.G. RETIREMENT ACCOUNTS**

#### LHA Policy

LHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, LHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, LHA will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, LHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

A detailed discussion of excluded income is provided in Chapter 6, Part I.

LHA must obtain verification for income exclusions only if, without verification, LHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, LHA will confirm that LHA records verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

#### LHA Policy

LHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family's rent (as is the case with the earned income disallowance). In all other cases, LHA will report the amount to be excluded as indicated on documents provided by the family.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

#### LHA Policy

LHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by families claiming to have zero annual income. These families will be re-certifying at least every 6 months.

## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that LHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

See Chapter 6 (6-II.B.) for a full discussion of this deduction. LHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### **Elderly/Disabled Family Deduction**

See the Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. LHA will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

#### **Amount of Expense**

##### LHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

LHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. LHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, LHA must verify that:



- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

**Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. LHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter, and as described in Chapter 7 (7-IV.A) of this plan.

**Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for LHA’s policy on what counts as a medical expense.

**Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

LHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

**Expenses Incurred in Past Years**

LHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, LHA will verify: The anticipated repayment schedule, the amounts paid in the past, and whether the amounts to be repaid have been deducted from the family’s annual income in past years

**7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

**Amount of Expense**

*Attendant Care*

LHA Policy LHA will accept written third-party documents provided by the family. If family-provided documents are not available, LHA will provide a third-party verification form directly to the care provider requesting the needed information. Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks. Third-party verification form signed by the provider, if family-provided documents are not available. If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

*Auxiliary Apparatus*

LHA Policy Expenses for auxiliary apparatus will be verified through: Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months. Third-party verification form signed by the provider, if family-provided documents are not available. If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months. In addition, LHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

**Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. LHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

**Family Member(s) Permitted to Work**

LHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

LHA Policy

LHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be \_\_\_\_\_

provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

#### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### LHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I. In addition, LHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

#### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. LHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

#### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

#### LHA Policy

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

#### **Pursuing an Eligible Activity**

LHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

#### LHA Policy

##### *Information to be gathered*

LHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

##### *Seeking Work*

Whenever possible, LHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases LHA will request family-provided verification from the agency of the member's job seeking efforts to date and require the family to submit to LHA any reports provided to the other agency. In the event third-party verification is not available, LHA will provide the family with a form on which the family member must record job search efforts. LHA will review this information at each subsequent reexamination for which this deduction is claimed.

##### *Furthering Education*

LHA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

##### *Gainful Employment*

LHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family

**Exhibit 7-1: Summary of Documentation Requirements for Noncitizens [HCV GB, pp. 5-9 and 5-10]**

<ul style="list-style-type: none"> <li>• <b>All noncitizens</b> claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to LHA.</li> <li>• Except for persons 62 or older, all noncitizens must sign a verification consent form</li> <li>• Additional documents are required based upon the person's status.</li> </ul>	
<p><b>Elderly Noncitizens</b> • A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.</p>	
<p><b>All other Noncitizens</b> • Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</p>	
<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

members may be verified. The documentation may be provided by the family.

**Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

LHA Policy

LHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

LHA will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

LHA will verify that the child care provider is not an assisted family member. Verification will be made through the head of household’s declaration of family members who are expected to reside in the unit.

**Reasonableness of Expenses**

Only reasonable child care costs can be deducted.

LHA Policy

The actual costs the family incurs will be compared with LHA’s established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, LHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

Chapter 8 LEASING AND INSPECTIONS  
[24 CFR 5, Subpart G; 24 CFR 966, Subpart A]

**INTRODUCTION** Public housing leases are the basis of the legal relationship between LHA and the tenant. All units must be occupied pursuant to a dwelling lease agreement that complies with HOD's regulations.

HUD rules also require LHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, LHA may require additional inspections in accordance with LHA policy.

This chapter is divided into two parts as follows:

Part I: Leasing. This part describes pre-leasing activities and LHA’s policies pertaining to lease execution, modification, and payments under the lease.

Part II: Inspections. This part describes LHA’s policies for inspecting dwelling units.

## **PART I: LEASING**

### **8-I.A. OVERVIEW**

An eligible family may occupy a public housing dwelling unit under the terms of a lease. The lease must meet all regulatory requirements, and must also comply with applicable state and local laws and codes.

The term of the lease must be for a period of 12 months. The lease must be renewed automatically for another 12-month term, except that LHA may not renew the lease if the family has violated the community service requirement [24 CFR 966.4(a)(2)]. PIH Notice 2015-12.

PHAs must adopt smoke-free policies, which must be implemented no later than July 18, 2018. A model policy is attached as Exhibit 8-1.

Part I of this chapter contains regulatory information, when applicable, as well as LHA’s policies governing leasing issues.

### **8-I.B. LEASE ORIENTATION**

#### LHA Policy

After unit acceptance but prior to occupancy, a LHA representative will provide a lease orientation to the family. The head of household or spouse is required to attend.

#### **Orientation Agenda**

#### LHA Policy

When families attend the lease orientation, they will be provided with:

- A copy of the lease including LHA’s grievance procedure

- A copy of the resident handbook.

- A copy of the pamphlet *Protect Your Family from Lead in Your Home* a copy

- of “Is Fraud worth It?” (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse. (Included in resident handbook)

- A copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH ~~2010-19-2017-12~~

- A copy of the house rules

- A copy of the PHA’s schedule of maintenance charges

- A copy of the VAWA notice of occupancy rights (see section 16-VII.C)

- A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

- A copy of the PHA’s smoke free policy

Topics to be discussed will include: Applicable deposits and other charges Review and explanation of lease provisions Unit maintenance and work orders LHA’s reporting requirements Explanation of occupancy forms Community service requirements Family choice of rent VAWA protections

### **8-I.C. EXECUTION OF LEASE**

The lease must be executed by the tenant and LHA, except for automatic renewals of a lease [24 CFR 966.4(a)(3)].

A lease is executed at the time of admission for all new residents. A new lease is also executed at the time of transfer from—

one LHA unit to another.

The lease must state the composition of the household as approved by LHA (family members and any PHA-approved live-in aide) [24 CFR 966.4(a) (1)(v)]. See Section 8-I.D. for policies regarding changes in family composition during the lease term.

LHA Policy

The head of household, spouse or co-head, and all other adult members of the household will be required to sign the public housing lease prior to admission. An appointment will be scheduled for the parties to execute the lease. The head of household will be provided a copy of the executed lease and LHA will retain a copy in the resident's file.

Files for households that include a live-in aide will contain file documentation signed by the live-in aide, that the live-in aide is not a party to the lease and is not entitled to LHA assistance. The live-in aide is only approved to live in the unit while serving as the attendant for the participant family member.

**8-I.D. MODIFICATIONS TO THE LEASE**

The lease may be modified at any time by written agreement of the tenant and LHA [24 CFR 966.4(a)(3)].

**Modifications to the Lease Form**

LHA may modify its lease from time to time. However, LHA must give residents 30 days advance notice of the proposed changes and an opportunity to comment on the changes. LHA must also consider any comments before formally adopting the new lease [24 CFR 966.3].

After proposed changes have been incorporated into the lease and approved by the Board, each family must be notified at least 60 days in advance of the effective date of the new lease or lease revision. A resident's refusal to accept permissible and reasonable lease modifications that are made in accordance with HUD requirements, or are required by HUD, is grounds for termination of tenancy [24 CFR 966.4(1)(2)(iii)(E)].

#### LHA Policy

The family will have 30 days to accept the revised lease. If the family does not accept the offer of the revised lease within that 30 day timeframe, the family's tenancy will be terminated for other good cause in accordance with the policies in Chapter 13.

Schedules of special charges and rules and regulations are subject to modification or revision. Because these schedules are incorporated into the lease by reference, residents and resident organizations must be provided at least thirty days written notice of the reason(s) for any proposed modifications or revisions, and must be given an opportunity to present written comments. The notice must be delivered directly or mailed to each tenant; or posted in at least three conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, or if none, a similar central business location within the project. Comments must be taken into consideration before any proposed modifications or revisions become effective [24 CFR 966.5].

After the proposed revisions become effective they must be publicly posted in a conspicuous manner in the project office and must be furnished to applicants and tenants on request [24 CFR 966.5].

#### LHA Policy

When LHA proposes to modify or revise schedules of special charges or rules and regulations, LHA will post a copy of the notice in the central office, and will mail a copy of the notice to each resident family. Documentation of proper notice will be included in each resident file.

#### **Other Modifications**

##### LHA Policy

The lease will be amended to reflect all changes in family composition.

If, for any reason, any member of the household ceases to reside in the unit, the lease will be amended by drawing a line through the person's name. The head of household and LHA will be required to initial and date the change.

If a new household member is approved by LHA to reside in the unit, the person's name will be added to the lease. The head of household and LHA will be required to initial and date the change. If the new member of the household is an adult, s/he will also be required to sign and date the lease.

Policies governing when and how changes in family composition must be reported are contained in Chapter 9, Reexaminations.

#### **8-I.E. SECURITY DEPOSITS [24 CFR 966.4(b)(5)]**

At the option of LHA, the lease may require security deposits. The amount of the security deposit cannot exceed one month's rent or a reasonable fixed amount as determined by LHA. LHA requires the family to pay the security deposit in full prior to occupancy.

##### LHA Policy

Residents must pay a security deposit to LHA at the time of admission. The amount of the security deposit will be equal to the family's total tenant payment at the time of move-in, and must be paid in full prior to occupancy.

LHA will hold the security deposit for the period the family occupies the unit. LHA will not use the security deposit for rent or other charges while the resident is living in the unit.

Within 31 days after the termination of the tenancy and delivery of possession of the unit, LHA will refund to the resident the amount of the security deposit, less any amount needed to pay the cost of unpaid rent, damages listed on the move-out inspection report that exceed normal wear and tear, and other charges due under the lease.

LHA will provide the resident with a written list of any charges against the security deposit within 30 business days of the end of liability for rent. If the resident disagrees with the amount charged, LHA will provide a meeting to discuss the charges.

#### **8-I.F. PAYMENTS UNDER THE LEASE Rent Payments [24 CFR 966.4(b)(1)]**

Families must pay the amount of the monthly tenant rent determined by LHA in accordance with HUD regulations, Florida Landlord Tenant law and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

The lease must specify the initial amount of the tenant rent at the beginning of the initial lease term, and LHA must give written notice stating any change in the amount of tenant rent and when the change is effective.

#### LHA Policy

The tenant rent is due and payable to LHA on the first of every month.

If a family's tenant rent changes, LHA will notify the family of the new amount and the effective date by sending a "Notice of Rent Adjustment" which will become an attachment to the lease.

#### **Late Fees and Nonpayment**

The LHA lease provides for payment of penalties when the family is late in paying tenant rent [24 CFR 966.4(b) (3)]. The lease must provide that late payment fees are not due and collectible until two weeks after LHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b) (4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under LHA grievance procedures. LHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e) (8)].

#### LHA Policy

If the family fails to pay their rent, or have a payment postmarked, by the seventh day of the month, and LHA has not agreed to accept payment at a later date, a 14 day Notice to Vacate will be issued to the resident for failure to pay rent, demanding payment in full or the surrender of the premises.

In addition, if the resident fails to make payment by the end of the day (mid-night) or have a payment postmarked by the seventh day of the month, a late fee of \$25.00 will be charged. Notices of late fees will be in accordance with requirements regarding notices of adverse action. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, LHA may not take action for nonpayment of the fee until the conclusion of the grievance process. If the resident can document financial hardship, the late fee may be waived on a case-by-case basis.

When a check is returned for insufficient funds or is written on a closed account, the rent will be considered unpaid and a returned check fee of \$50.00 will be charged to the family. The fee will be due and payable 14 days after billing.

#### **Excess Utility Charges**

If LHA charges the tenant for consumption of excess utilities, the lease must state the basis for the determination of such charges. The imposition of charges for consumption of excess utilities is permissible only if the charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances [24 CFR 966.4(b) (2)].

Schedules of special charges for utilities that are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the development office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for excess utility consumption are not due and collectible until two weeks after LHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b) (4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under LHA grievance procedures. LHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e) (8)].

#### LHA Policy

When applicable, families will be charged for excess utility usage according to LHA's current posted schedule. Notices of excess utility charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the



required timeframe, LHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of excess utility charges is a violation of the lease and is grounds for eviction.

### **Maintenance and Damage Charges**

If LHA charges the tenant for maintenance and repair beyond normal wear and tear, the lease must state the basis for the determination of such charges [24 CFR 966.4(b) (2)].

Schedules of special charges for services and repairs which are required to be incorporated in the lease by reference must be publicly posted in a conspicuous manner in the Community Management office and must be furnished to applicants and tenants on request [24 CFR 966.5].

The lease must provide that charges for maintenance and repair beyond normal wear and tear are not due and collectible until two weeks after LHA gives written notice of the charges. The written notice is considered an adverse action, and must meet the requirements governing a notice of adverse action [24 CFR 966.4(b) (4)].

The notice of proposed adverse action must identify the specific grounds for the action and inform the family of their right for a hearing under LHA grievance procedures. LHA must not take the proposed action until the time for the tenant to request a grievance hearing has expired, or (if a hearing was requested within the required timeframe,) the grievance process has been completed [24 CFR 966.4(e) (8)].

#### LHA Policy

When applicable, families will be charged for maintenance and/or damages according to LHA's current schedule. Work that is not covered in the schedule will be charged based on the actual cost of labor and materials to make needed repairs (including overtime, if applicable).

Notices of maintenance and damage charges will be mailed monthly and will be in accordance with requirements regarding notices of adverse actions. Charges are due and payable 14 calendar days after billing. If the family requests a grievance hearing within the required timeframe, LHA may not take action for nonpayment of the charges until the conclusion of the grievance process.

Nonpayment of maintenance and damage charges is a violation of the lease and is grounds for eviction.

## **PART II: INSPECTIONS**

### **8-II.A. OVERVIEW**

HUD rules require LHA to inspect each dwelling unit prior to move-in, at move-out, and annually during occupancy. In addition, LHA may require additional inspections, in accordance with LHA Policy. This part contains LHA's policies governing inspections, notification of unit entry, and inspection results.

### **8-II.B. TYPES OF INSPECTIONS**

#### **Move-In Inspections [24 CFR 966.4(i)]**

The lease must require LHA and the family to inspect the dwelling unit prior to occupancy in order to determine the condition of the unit and equipment in the unit. A copy of the initial inspection, signed by LHA and the resident, must be provided to the tenant and be kept in the resident file.

#### LHA Policy

Any adult family member may attend the initial inspection and sign the inspection form for the head of household.

#### **Move-Out Inspections [24 CFR 966.4(i)]**

LHA must inspect the unit at the time the resident vacates the unit and must allow the resident to participate in the inspection if he or she wishes, unless the tenant vacates without notice to LHA. LHA must provide to the tenant a statement of any charges to be made for maintenance and damage beyond normal wear and tear.

The difference between the condition of the unit at move-in and move-out establishes the basis for any charges against the security deposit so long as the work needed exceeds that for normal wear and tear.

#### LHA Policy

When applicable, LHA will provide the tenant with a statement of charges to be made for maintenance and damage beyond normal wear and tear, within 31 days after termination of the tenancy and delivery of possession to LHA

#### **Annual Inspections [24 CFR 5.705]**

LHA is required to inspect all occupied units annually using HUD's Uniform Physical Condition Standards (UPCS).

Under the Public Housing Assessment System (PHAS), HUD's physical condition inspections do not relieve LHA of this responsibility to inspect its units [24 CFR 902.20(d)].

## **Quality Control Inspections**

The purpose of quality control inspections is to assure that all defects were identified in the original inspection, and that repairs were completed at an acceptable level of craftsmanship and within an acceptable time frame

### LHA Policy

Supervisory quality control inspections will be conducted in accordance with LHA's maintenance plan.

## **Special Inspections**

### LHA Policy

LHA staff may conduct a special inspection for any of the following reasons:

- Housekeeping Unit condition
- Suspected lease violation
- Preventive maintenance+
- Routine maintenance
- There is reasonable cause to believe an emergency exists

## **Other Inspections**

### LHA Policy

Building exteriors, grounds, common areas and systems will be inspected according to LHA's maintenance plan.

## **8-II.C. NOTICE AND SCHEDULING OF INSPECTIONS Notice of Entry**

### ***Non-emergency Entries [24 CFR 966.4(j)(1)]***

LHA may enter the unit, with reasonable advance notification to perform routine inspections and maintenance, make improvements and repairs, or to show the unit for re-leasing. A written statement specifying the purpose of LHA entry delivered to the dwelling unit at least two days before such entry is considered reasonable advance notification.

### LHA Policy

LHA will notify the resident in writing at least 48 hours prior to any non-emergency inspection.

For regular annual inspections, the family will receive at least 2 weeks written notice of the inspection to allow the family to prepare the unit for the inspection.

Prior to entering for repairs requested by the family LHA will seek permission to enter the resident's unit if the resident is not present.

### ***Emergency Entries [24 CFR 966.4(j) (2)]***

LHA may enter the dwelling unit at any time without advance notice when there is reasonable cause to believe that an emergency exists. If no adult household member is present at the time of an emergency entry, LHA must leave a written statement showing the date, time and purpose of the entry prior to leaving the dwelling unit.

## **Scheduling of Inspections**

### LHA Policy

Inspections will be conducted during business hours. If a family needs to reschedule an inspection, they must notify LHA at least 24 hours prior to the scheduled inspection. LHA will reschedule the inspection no more than once unless the resident has a verifiable good cause to delay the inspection. LHA may request verification of such cause.

## **Attendance at Inspections**

Residents are required to be present for move-in inspections [24 CFR 966.4(i)]. There is no such requirement for other types of inspections.

### LHA Policy

Except at move-in inspections, the resident is not required to be present for the inspection. The resident may attend the inspection if he or she wishes.

If no one is at home, the inspector will enter the unit, conduct the inspection and leave a copy of the inspection report in the unit.

## **8-II.D. INSPECTION RESULTS**

LHA is obligated to maintain dwelling units and the project in decent, safe and sanitary condition and to make necessary repairs to dwelling units [24 CFR 966.4(e)].

## **Emergency Repairs [24 CFR 966.4(h)]**

If the unit is damaged to the extent that conditions are created which are hazardous to the life, health, or safety of the occupants, the tenant must immediately notify LHA of the damage, and LHA must make repairs within a reasonable time frame.

If the damage was caused by a household member or guest, LHA must charge the family for the reasonable cost of repairs. LHA may also take lease enforcement action against the family. If LHA cannot make repairs quickly, LHA must offer the family standard alternative accommodations. If LHA can neither repair the defect within a reasonable time frame nor offer alternative housing, rent shall be abated in proportion to the seriousness of the damage and loss in value as a dwelling. Rent shall not be abated if the damage was caused by a household member or guest, or if the resident rejects the alternative accommodations.

#### LHA Policy

When conditions in the unit are hazardous to life, health, or safety, LHA will make repairs or otherwise abate the situation within 24 hours. Defects hazardous to life, health or safety include, but are not limited to, the following:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system Utilities not in service, including no running hot and cold water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors
- Locks on exterior doors
- Latches on windows
- A nonfunctional range
- A nonfunctional refrigerator
- All lighting in the units is off.

#### **Non-emergency Repairs**

##### LHA Policy

LHA will endeavor to correct non-life threatening health and safety defects within 15 business days of the inspection date. If LHA is unable to make repairs within that period due to circumstances beyond LHA's control (e.g. required parts or services are not available, weather conditions, etc.) LHA will notify the family of an estimated date of completion. The family must allow LHA access to the unit to make repairs.

#### **Resident-Caused Damages**

##### LHA Policy

Damages to the unit beyond wear and tear will be billed to the tenant in accordance with the policies in 8-I.G., Maintenance and Damage Charges.

Repeated or excessive damages to the unit beyond normal wear and tear will be considered a serious or repeated violation of the lease.

#### ***Housekeeping***

##### LHA Policy

Residents whose housekeeping habits pose a non-emergency health or safety risk, encourage insect or rodent infestation, or cause damage to the unit are in violation of the lease. In these instances, LHA will provide proper notice of a lease violation.

A re-inspection will be conducted within 18 days to confirm that the resident has complied with the requirement to abate the problem. Failure to abate the problem or allow for a re-inspection is considered a violation of the lease and may result in termination of tenancy in accordance with Chapter 13.

Notices of lease violation will also be issued to residents who purposely disengage the unit's smoke detector. Only one warning will be given. A second incidence will result in lease termination.





**EXHIBIT 8-1**

**Lakeland Housing Authority**

**NO-SMOKING POLICY**

**Introduction**

Due to the increased risk of fire, increased maintenance costs, and the known health effects of secondhand smoke, West Lake Management Company has determined that for the benefit and well-being of the residents, guests, employees and all who visit name of building/s facilities, smoking will not be permitted on the property. Copies of this policy shall be distributed to all current leaseholders, tenants, residents, new residents, applicants, and employees.

**Smoking shall not be permitted:**

- By any person including current residents, new residents, tenants, their roommates, their guests, their agents nor their employees inside any building which is part of the name of building/s.
- In any individual apartment units or balconies or patios, which are part of those units.
- In common areas within any building such as entryways, hallways, restrooms, laundry rooms and all openings to any housing property, including window and door openings.
- In all other outside areas of the properties, stairways, yards, playground areas and parking lots

**Definitions**

The term "smoking" means inhaling, exhaling, breathing, burning, carrying, or possessing any lighted cigar, cigarette, pipe, other tobacco products, or similarly lighted smoking material in any manner or in any form including all electronic cigarette products, commonly referred to as "e-cigarettes".

The terms "leaseholder" "resident and "tenant" shall refer to any entity or person(s) who have signed a lease agreement leasing a housing unit from name of building/s.

**Rules and Regulations**

All leaseholders, residents and tenants of housing units of Westlake Management Properties and live in residents, roommates or occupants of those housing units and their guests, agents, employees, and invitees must abide by the following rules and regulations:

1. **Prohibition of Smoking Inside Buildings.** Smoking shall not be permitted anywhere inside any building located on Westlake Management property, including, but not limited to, individual apartment or housing units, balconies and patios attached or a part of those housing units and including all common areas such as entryways, hallways, restrooms, laundry rooms, and all openings to the building including window and door openings.

## **2. Prohibition of Smoking in Areas Outside Buildings.**

Smoking shall be prohibited in all outside areas of Westlake Management property to include stairways, landings, yards, playground areas, parking lots.

## **3. Phase In of Policy.**

a. Effective on date, all leaseholders, residents and tenants of apartment or housing units of Westlake Management Properties and their live-in residents, roommates, occupant's guests, invitees, agents, and employees, will be prohibited from smoking anywhere in or outside the building or unit which they occupy or reside.

## **4. Enforcement**

a. Procedures in effect will consist of verbal and written cease-and desist requests made to the leaseholder, resident or tenant deemed responsible for that violation.

b. Effective date, enforcement procedures will include formal notices of violation and notices of lease termination and eviction. That is, violation of the no smoking policy by the leaseholder, resident or tenant or by any of his or her guests, live-in residents, invitees, agents or employees may be treated as a material breach of the tenant's lease agreement and enforced in accordance with the notice and termination procedures that apply to the lease or rental agreement of the particular leaseholder, resident or tenant who have themselves violated or who are responsible for those who have violated the no-smoking policy.

## **5. Compliance by Leaseholders/Resident's Guests.**

Leaseholders, residents and tenants are responsible for ensuring that all other live-in residents, guests, invitees, agents and employees of the housing unit for which the leaseholder, resident or tenant is responsible are made aware of and comply with this policy.

## **6. Lease Violation.**

The leaseholder(s), resident(s) and tenant(s) are responsible for the actions all of his/her or their live in residents, occupants guests, invitees agents and employees. Failure to comply with any of the rules or regulations contained in this policy may be considered a material lease violation as set forth at paragraph 3 above and subject to leaseholder(s), resident(s) and tenant(s) to all leasehold remedies including, but not limited to lease termination, eviction and damages which may include the cost to clean items discolored and/or which contain the odor of smoke including, but not limited to carpets, drapes, and walls, or the cost to repair burn marks and remove cigarette butts or residue.

## **7. Complaints.**

If leaseholder or resident witnesses someone smoking or smells tobacco smoke in any place within the interior buildings of Westlake Management properties or witnesses someone smoking on the grounds , the leaseholder or resident should report the violation or the odor to the property manager in writing as soon as possible.

## **8. Investigations.**

Property managers receiving a complaint will seek the specific source of the tobacco smoke and will take appropriate enforcement action, consistent with paragraph 3 above as soon as possible.

## **9. Communication of Policy.**

This policy shall be communicated by the property manager to all current leaseholders and residents of Westlake

Management and employees at least sixty (30) days prior to its effective date, and at the time of employment for all new employees, and prior to admission and/or prior to the signing of a lease for any new leaseholder or resident.

a. New leaseholders shall be given two (2) copies of the policy. After review, the leaseholder must sign one copy and return the executed copy to the property manager prior to moving in. The property manager shall place the signed copy in the leaseholder's file.

b. Upon adoption of the policy, all persons whose names are on a lease of a housing unit at Westlake Property Management shall be given two copies of the policy by the property manager. After review, all such persons must sign one copy and return the executed copy to the property manager within ten (10) days. The property manager shall place the signed copy in the leaseholder/resident/tenant's file. In the event that any such person fails or refuses to sign his or her confirmation that he or she has read, understood and agrees to comply with the provisions of Westlake Management no-smoking policy, Westlake management will nevertheless be entitled to assume and understand that every such leaseholder read, understood and agreed to comply with this no-smoking policy.

**10. Effective Date.** The effective date of this policy shall be April 1, 2014.

11. If any provision of this policy is invalid or unenforceable under applicable law, such provision shall be amended to comply with such law. The reformation of any provision of this policy shall not invalidate this policy or any lease agreement into which this policy is incorporated. An invalid provision that cannot be reformed shall be severed and the remaining portions of this policy shall be enforced



**Chapter 9 REEXAMINATIONS**  
[24 CFR 960.257, 960.259, 966.4]

## INTRODUCTION

LHA is required to monitor each family's income and composition over time, and to adjust the family's rent accordingly. PHAs must adopt policies concerning the conduct of annual and interim reexaminations that are consistent with regulatory requirements, and must conduct reexaminations in accordance with such policies [24 CFR 960.257(c)]. (Note: Properties/Communities with Tax Credit requirements must re-certify all families regardless if they pay income based or flat rent)

The frequency with which LHA must reexamine income for a family depends on whether the family pays income-based or flat rent. HUD requires LHA to offer all families the choice of paying income-based rent or flat rent at least annually. LHA's policies for offering families a choice of rents are located in Chapter 6.

This chapter discusses both annual and interim reexaminations.

Part I: Annual Reexaminations for Families Paying Income Based Rents. This part discusses the requirements for annual reexamination of income and family composition. Full reexaminations are conducted at least once a year for families paying income-based rents.

Part II: Reexaminations for Families Paying Flat Rents. This part contains LHA's policies for conducting full reexaminations of family income and composition for families paying flat rents. These full reexaminations are conducted at least once every 3 years. This part also contains LHA's policies for conducting annual updates of family composition for flat rent families.

Part III: Interim Reexaminations. This part includes HUD requirements and LHA policies related to when a family may and must report changes that occur between annual reexaminations.

Part IV: Recalculating Tenant Rent. After gathering and verifying required information for an annual or interim reexamination, LHA must recalculate the tenant rent. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

Policies governing reasonable accommodation, family privacy, required family cooperation and program abuse, as described elsewhere in this ACOP, apply to annual and interim reexaminations.

## **PART I: ANNUAL REEXAMINATIONS FOR FAMILIES PAYING INCOME BASED RENTS [24 CFR 960.257] 9-I.A. OVERVIEW**

For those families who choose to pay income-based rent, LHA must conduct a reexamination of income and family composition at least annually [24 CFR 960.257(a) (1)]. For families who choose flat rents, LHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. Policies related to the reexamination process for families paying flat rent are located in Part II of this chapter.

For all residents of public housing, whether those residents are paying income-based or flat rents, LHA must conduct an annual review of community service requirement compliance pursuant PIH Notice 2015-12. This annual reexamination is also a good time to have residents sign consent forms for criminal background checks in case the criminal history of a resident is needed at some point to determine the need for lease enforcement or eviction.

LHA is required to obtain information needed to conduct reexaminations. How that information will be collected is left to the discretion of LHA. Families are required to provide current and accurate information on income, assets, allowances and deductions, family composition and community service compliance as part of the reexamination process [24 CFR 960.259].

This part contains LHA's policies for conducting annual reexaminations.

## **9-I.B STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 960.257]**

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The

determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income and may choose whether to verify non-fixed income amounts in years where no fixed-income review is required. If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

#### **PHA Policy**

The PHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The PHA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, the PHA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, the PHA will obtain thirdparty verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

### **9-I.C. SCHEDULING ANNUAL REEXAMINATIONS**

LHA must establish a policy to ensure that the annual reexamination for each family paying an income-based rent is completed within a 12 month period [24 CFR 960.257(a) (1)].

#### **LHA Policy**

Generally, LHA will schedule annual reexaminations to coincide with the family's anniversary date. LHA will begin the annual reexamination process approximately 120 days in advance of the scheduled effective date.

*Anniversary date* is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family transfers to a new unit, LHA will perform a new annual reexamination, and the anniversary date will be changed.

LHA may also conduct an annual reexamination for completion prior to the anniversary date for administrative purposes.

#### **Notification of and Participation in the Annual Reexamination Process**

LHA is required to obtain information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of LHA. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

#### **LHA Policy**

Families generally are required to bring or mail in annual reexamination documentation.

Notification of annual reexamination interviews will be sent by first-class mail and will inform the family of the information and documentation that must be submitted.

If a family fails to submit required documentation to LHA the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

An advocate, interpreter, or other assistant may assist the family in the annual review process.

### **9-I.D. CONDUCTING ANNUAL REEXAMINATIONS**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c) (2)].

#### **LHA Policy**

Families will be required to provide all documentation (as described in the reexamination notice) The required information will include a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy

Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

### **Change in Unit Size**

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. LHA may use the results of the annual reexamination to require the family to move to an appropriate size unit [24 CFR 960.257(a)(4)]. Policies related to such transfers are located in Chapter 12.

### **Criminal Background Checks**

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)(1)(ii)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### LHA Policy

Each household member age 15 and over will be required to execute a consent form for a criminal background check as part of the annual reexamination process.

### **Compliance with Community Service**

For families who include nonexempt individuals, LHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a) (3)].

See Chapter 11 for LHA's policies governing compliance with the community service requirement pursuant PIH Notice 2015-12.

## **9-I.E. EFFECTIVE DATES**

As part of the annual reexamination process, LHA must make appropriate adjustments in the rent after consultation with the family and upon verification of the information [24 CFR 960.257(a) (1)].

### LHA Policy

In general, an *increase* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If LHA chooses to conduct an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by LHA, but will always allow for the 30-day notice period. If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the tenant rent that results from an annual reexamination will take effect on the family's anniversary date.

If LHA chooses to conduct an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by LHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by LHA by the date specified, and this delay prevents LHA from completing the reexamination as scheduled.

## **PART II: REEXAMINATIONS FOR FAMILIES PAYING FLAT RENTS [24 CFR 960.257(2)]**

### **9-II.A. OVERVIEW**

HUD requires that LHA offer all families the choice of paying income-based rent or flat rent at least annually. LHA's policies for offering families a choice of rents are located in Chapter 6.

For families who choose flat rents, LHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every 3 years [24 CFR 960.257(a)(2)]. LHA is only required to provide the amount of income-based rent the family might pay in those years that LHA conducts a full reexamination of income and family composition, or upon request of the family after the family submits updated income information [24 CFR 960.253(e)(2)].

As it does for families that pay income-based rent, on an annual basis, LHA must also review community service compliance and should have each adult resident consent to a criminal background check.

This part contains LHA's policies for conducting reexaminations of families who choose to pay flat rents.

### **9-II.B. FULL REEXAMINATION OF FAMILY INCOME AND COMPOSITION**

#### **Frequency of Reexamination**

##### LHA Policy

For families paying flat rents, LHA will conduct a full reexamination of family income and composition at least once every 3 years.

#### **Reexamination Policies**

##### LHA Policy

In conducting full reexaminations for families paying flat rents, LHA will follow the policies used for the annual reexamination of families paying income-based rent as set forth in Sections 9-I.B through 9-I.D above.

### **9-II.C. REEXAMINATION OF FAMILY COMPOSITION (“ANNUAL UPDATE”)**

As noted above, full reexaminations are conducted at least every 3 years for families paying flat rents. In the years between full reexaminations, regulations require LHA to conduct a reexamination of family composition (“annual update”) [24 CFR 960.257(a)(2)].

The annual update process is similar to the annual reexamination process, except that LHA does not collect information about the family's income and expenses, and the family's rent is not recalculated following an annual update.

#### **Scheduling**

LHA must establish a policy to ensure that the reexamination of family composition for families choosing to pay the flat rent is completed at least annually [24 CFR 960.257(a)(2)].

#### LHA Policy

For families paying flat rents, annual updates will be conducted in each of the 2 years following the full reexamination. In scheduling the annual update, LHA will follow the policy used for scheduling the annual reexamination of families paying income-based rent as set forth in Section 9-I.B. above.

#### **Conducting Annual Updates**

The terms of the public housing lease require the family to furnish information necessary for the redetermination of rent and family composition [24 CFR 966.4(c)(2)].

#### LHA Policy

Generally, the family will not be required to attend an interview for an annual update. However, if LHA determines that an interview is warranted, the family may be required to attend.

Notification of the annual update will be sent by first-class mail and will inform the family of the information and documentation that must be provided to LHA. The family will have 15 business days to submit the required information to LHA. If the family is unable to obtain the information or documents within the required time frame, the family may request an extension. LHA will accept required documentation by mail, by fax, or in person.

If the family's submission is incomplete, or the family does not submit the information in the required time frame, LHA will send a second written notice to the family. The family will have 7 business days from the date of the second notice to provide the missing information or documentation to LHA.

If the family does not provide the required documents or information within the required time frame on first request (plus any extensions), the family will be in violation of their lease and may be terminated in accordance with the policies in Chapter 13.

#### ***Change in Unit Size***

Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. LHA may use the results of the annual update to require the family to move to an appropriate size unit [24 CFR 960.257(a) (4)]. Policies related to such transfers are located in Chapter 12.

#### ***Criminal Background Checks***

Information obtained through criminal background checks may be used for lease enforcement and eviction [24 CFR 5.903(e)]. Criminal background checks of residents will be conducted in accordance with the policy in Section 13-IV.B.

#### LHA Policy

Each household member age 18 and over will be required to execute a consent form for criminal background check as part of the annual update process.

#### ***Compliance with Community Service***

For families who include nonexempt individuals, LHA must determine compliance with community service requirements once each 12 months [24 CFR 960.257(a) (3)].

See Chapter 11 for LHA's policies governing compliance with the community service requirement.

### **PART III: INTERIM REEXAMINATIONS [24 CFR 960.257; 24 CFR 966.4]**

#### **9-III.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and LHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances LHA must process interim reexaminations to reflect those changes. HUD regulations also permit LHA to conduct interim reexaminations of income or family composition at any time.

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition change. LHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and LHA policies describing what changes families are required to report, what changes families may choose to report, and how LHA will process both PHA- and family-initiated interim reexaminations.

#### **9-III.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

LHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to provisions of the public housing lease, LHA has limited discretion in this area. Changes in family or household composition may make it appropriate to consider transferring the family to comply with occupancy standards. Policies related to such transfers are located in Chapter 12.

#### LHA Policy

All families, those paying income-based rent as well as flat rent, must report all changes in family and household composition that occur between annual reexaminations (or annual updates).

LHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require LHA approval. However, the family is required to promptly notify LHA of the addition [24 CFR 966.4(a) (1) (v)].

#### LHA Policy

The family must inform LHA of the birth, adoption, or court-awarded custody of a child within 7 days.

#### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request LHA approval to add a new family member [24 CFR 966.4(a)(1)(v)] or other household member (live-in aide or foster child) [24 CFR 966.4(d)(3)].

LHA may adopt reasonable policies concerning residence by a foster child or a live-in aide, and defining the circumstances in which LHA consent will be given or denied. Under such policies, the factors considered by LHA may include [24 CFR 966.4(d) (3)(i)]:

Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

#### **LHA's obligation to make reasonable accommodation for persons with disabilities.**

#### LHA Policy

Families must request LHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than a total of 21 cumulative calendar days during any 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by LHA prior to the individual moving into the unit.

LHA will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody, or marriage, if it will require the family to transfer to a larger size unit (under the transfer policy in Chapter 12), unless the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation, that should be considered by LHA. Exceptions will be made on a case-by-case basis.

LHA will not approve the addition of a new family or household member unless the individual meets LHA's eligibility criteria (see Chapter 3) and documentation requirements (See Chapter 7, Part II).

If LHA determines that an individual does not meet LHA's eligibility criteria or documentation requirements, LHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

LHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

#### **Departure of a Family or Household Member**

#### LHA Policy

If a family member ceases to reside in the unit, the family must inform LHA within 7 days. This requirement also applies to family members who had been considered temporarily absent, who are now permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform LHA within 7 days.

### **9-III.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because LHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, LHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### LHA Policy

This section only applies to families paying income-based rent. Families paying flat rent are not required to report changes in income or expenses.

### **PHA-initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by LHA. They are not scheduled because of changes reported by the family.

#### LHA Policy

LHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), LHA will conduct an interim reexamination at the start, to adjust the exclusion with any changes in income, and at the conclusion of the second 12 month exclusion period (50 percent phase-in period).

**If the family has reported zero income, LHA will conduct an interim reexamination every 4 months as long as the family continues to report that they have no income.**

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income); LHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, LHA will conduct an interim reexamination.

LHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

### **Family-Initiated Interim Reexaminations**

LHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 960.257(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)].

#### ***Required Reporting***

HUD regulations give LHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### LHA Policy

Families are required to report all increases in earned income, including new employment, within 10 days of the date the change takes effect.

LHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's rent will change as a result of the increase. In all other cases, LHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

#### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 960.257(b)]. LHA must process the request if the family reports a change that will result in a reduced family income [PH Occ. GB, p. 159].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

#### LHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the tenant rent, LHA will note the information in the tenant file, but will not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the tenant rent, LHA will conduct an interim reexamination. See Section 9III.D. for effective dates.

Families may report changes in income or expenses at any time.

## **9-III.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### LHA Policy



The family may notify LHA of changes either orally or in writing. If the family provides oral notice, LHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if LHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, LHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 7 days of receiving a request from LHA. This time frame may be extended for good cause with PHA approval. LHA will accept required documentation by mail, by fax, or in person.

#### **Effective Dates**

LHA must make the interim reexamination within a reasonable time after the family request [24 CFR 960.257(b)].

#### **LHA Policy**

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any underpaid rent and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

A family may report a decrease in income and other changes which would reduce the amount of rent, such as an increase in allowances or deductions, and LHA will process a family's request to have a family's rent re-evaluated. Reports of such changes must be made to LHA no later than the last day of each month in order for the change in rent to be effective on the first of the following month. LHA may delay the effective date of a participant request due to necessary documentation not being provided in a prompt manner. In cases where the change cannot be verified until after the date the change would become effective, the change will be made retroactively.

### **PART IV: RECALCULATING TENANT RENT**

#### **9-IV.A. OVERVIEW**

For those families paying income-based rent, LHA must recalculate the rent amount based on the income information received during the reexamination process and notify the family of the changes [24 CFR 966.4, 960.257]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

#### **9-IV.B. CHANGES IN UTILITY ALLOWANCES [24 CFR 965.507, 24 CFR 966.4]**

The tenant rent calculations must reflect any changes in LHA's utility allowance schedule [24 CFR 960.253(c)(3)].

Chapter 16 discusses how utility allowance schedules are established.

#### **LHA Policy**

Unless LHA is required to revise utility allowances retroactively, revised utility allowances will be applied to a family's rent calculations at the first annual reexamination after the allowance is adopted.

#### **9-IV.C. NOTIFICATION OF NEW TENANT RENT**

The public housing lease requires LHA to give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective [24 CFR 966.4(b)(1)(ii)].

When LHA re-determines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of LHA's schedule of Utility Allowances for families in LHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, LHA must notify the tenant that the tenant may ask for an explanation stating the specific grounds of LHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under LHA's grievance procedure [24 CFR 966.4(c)(4)].

#### **LHA Policy**

The notice to the family will include the annual and adjusted income amounts that were used to calculate the tenant rent.

#### **9-IV.D. DISCREPANCIES**

During an annual or interim reexamination, LHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, LHA may discover errors made by LHA. When errors resulting in the overpayment or underpayment of rent are discovered, corrections will be made in accordance with the policies in Chapter 15.

## **Chapter 10 PETS**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### **INTRODUCTION**

This chapter explains the LHA’s policies on the keeping of pets and any criteria or standards pertaining to the policies. The rules adopted are reasonably related to the legitimate interest of LHA to provide a decent, safe and sanitary living environment for all tenants, and to protect and preserve the physical condition of the property, as well as the financial interest of the PHA.

The chapter is organized as follows:

Part I: Assistance Animals. This part explains the difference between assistance animals and pets and contains policies related to the designation of an assistance animal as well as their care and handling.

Part II: Pet policies for all developments. This part includes pet policies that are common to both elderly/disabled developments and general occupancy developments.

Part III: Pet deposits and fees for general occupancy developments. This part contains policies for pet deposits and fees that are applicable to general occupancy developments.

### **PART I: ASSISTANCE ANIMALS**

[Section 504; Fair Housing Act (42 U.S.C.); 24 CFR 5.303; 24 CFR 960.705]

#### **10-I.A. OVERVIEW**

This part discusses situations under which permission for an assistance animal may be denied, and also establishes standards for the care of assistance animals.

Notice FAssistance animals are animals that assist, support, or provide service to a person with a disability, or that provide emotional support that alleviates one or more identified symptoms or effects of a person’s disability. Assistance animals – often referred to as “service animals,” “assistive animals,” “support animals,” or “therapy animals” – perform many disability-related functions, including but not limited to the following:

- Guiding individuals who are blind or have low vision
- Alerting individuals who are deaf or hearing impaired
- Providing minimal protection or rescue assistance
- Pulling a wheelchair
- Fetching items
- Alerting persons to impending seizures
- Providing emotional support to persons with disabilities who have a disability-related need for such support

Assistance animals that are needed as a reasonable accommodation for persons with disabilities are not considered pets, and thus, are not subject to the LHA’s pet policies described in Parts II through IV of this chapter [24 CFR 5.303; 960.705].

#### **10-I.B. APPROVAL OF ASSISTANCE ANIMALS**

A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person’s disability and his or her need for the animal [PH Occ. GB, p. 179].

LHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with the disability [PH Occ. GB, p. 178].

LHA’s refusal to permit persons with a disability to use and live with an assistance animal that is needed to assist them, would violate Section 504 of the Rehabilitation Act and the Fair Housing Act unless [PH Occ. GB, p. 179]:

- There is reliable objective evidence that the animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation
- There is reliable objective evidence that the animal would cause substantial physical damage to the property of others

PHAs have the authority to regulate assistance animals under applicable federal, state, and local law [24 CFR 5.303(b)(3); 960.705(b)(3)].

#### PHA Policy

For an animal to be excluded from the pet policy and be considered an assistance animal, there must be a person with disabilities in the household, and the family must request and LHA approve a reasonable accommodation in accordance with the policies contained in Chapter 2.

### **10-I.C. CARE AND HANDLING**

HUD regulations do not affect any authority LHA may have to regulate assistance animals under federal, state, and local law [24 CFR 5.303; 24 CFR 960.705].

#### LHA Policy

Residents must care for assistance animals in a manner that complies with state and local laws, including anti-cruelty laws.

Residents must ensure that assistance animals do not pose a direct threat to the health or safety of others, or cause substantial physical damage to the development, dwelling unit, or property of other residents.

When a resident's care or handling of an assistance animal violates these policies, LHA will consider whether the violation could be reduced or eliminated by a reasonable accommodation. If LHA determines that no such accommodation can be made, LHA may withdraw the approval of a particular assistance animal.

## **PART II: PET POLICIES FOR ALL DEVELOPMENTS**

[24 CFR 5, Subpart C; 24 CFR 960, Subpart G]

### **10-II.A. OVERVIEW**

The purpose of a pet policy is to establish clear guidelines for ownership of pets and to ensure that no applicant or resident is discriminated against regarding admission or continued occupancy because of ownership of pets. It also establishes reasonable rules governing the keeping of common household pets. This part contains pet policies that apply to all developments.

### **10-II.B. MANAGEMENT APPROVAL OF PETS**

#### **Registration of Pets**

LHA may require registration of the pet with LHA [24 CFR 960.707(b) 5)].

#### LHA Policy

Pets must be registered with LHA before they are brought onto the premises.

Registration includes documentation signed by a licensed veterinarian or state/local authority that the pet has received all inoculations required by state or local law, and that the pet has no communicable disease(s) and is pest-free. This registration must be renewed annually and will be coordinated with the annual reexamination date.

Pets will not be approved to reside in a unit until completion of the registration requirements.

#### **Refusal to Register Pets**

#### LHA Policy

LHA will refuse to register a pet if:

- The pet is not *a common household pet* as defined in Section 10-II.C. below
- Keeping the pet would violate any pet restrictions listed in this policy
- The pet owner fails to provide complete pet registration information, or fails to update the registration annually
- The applicant has previously been charged with animal cruelty under state or local law; or has been evicted, had to relinquish a pet or been prohibited from future pet ownership due to pet rule violations or a court order
- LHA reasonably determines that the pet owner is unable to keep the pet in compliance with the pet rules and other lease obligations. The pet's temperament and behavior may be considered as a factor in determining the pet owner's ability to comply with provisions of the lease.

If LHA refuses to register a pet, a written notification will be sent to the pet owner within 10 business days of the LHA's decision. The notice will state the reason for refusing to register the pet and will inform the family of their right to appeal the decision in accordance with the LHA's grievance procedures.

### **Pet Agreement**

#### LHA Policy

Residents who have been approved to have a pet must enter into a pet agreement with LHA or the approval of the pet will be withdrawn.

The pet agreement is the resident's certification that he or she has received a copy of LHA's pet policy and applicable house rules, that he or she has read the policies and/or rules, understands them, and agrees to comply with them.

The resident further certifies by signing the pet agreement that he or she understands that noncompliance with LHA's pet policy and applicable house rules may result in the withdrawal of LHA approval of the pet or termination of tenancy. An additional deposit will be required (Pet Deposit) in the amount of \$300.00.

### **10-ILC. STANDARDS FOR PETS [24 CFR 5.318; 960.707(b)]**

PHAs may establish reasonable requirements related to pet ownership including, but not limited to:

- Limitations on the number of animals in a unit (1 pet per household)
  - Prohibitions on types of animals that LHA classifies as dangerous, provided that such classifications are consistent with applicable state and local law (No snakes, pit bulls, etc...)
  - Prohibitions on individual animals, based on certain factors, including the size and weight of the animal
  - Requiring pet owners to have their pets spayed or neutered PHA's may not require pet owners to have any pet's vocal cords removed.
- 
- PHAs may not require pet owners to obtain or carry liability insurance.
  - PHAs may not require that cats be declawed.

### **Definition of "Common Household Pet"**

There is no regulatory definition of common household pet for public housing programs, although the regulations for pet ownership in both elderly/disabled and general occupancy developments use the term. The regulations for pet ownership in elderly/disabled developments expressly authorize PHAs to define the term [24 CFR 5.306(2)].

#### LHA Policy

*Common household pet* means a domesticated animal, such as a dog, cat, bird, hamsters, turtles or fish that is traditionally recognized as a companion animal and is kept in the home for pleasure rather than commercial purposes.

The following animals are not considered common household pets:

- Reptiles
- Rodents
- Insects
- Arachnids
- Wild animals or feral animals
- Pot-bellied pigs
- Animals used for commercial breeding

### **Pet Restrictions**

#### LHA Policy

The following animals are not permitted:

- Any animal whose adult weight will exceed 30 pounds Dogs of the Pit Bull, Rottweiler, Chow, Doberman Pincher or Boxer breeds Ferrets or other animals whose natural protective mechanisms pose a risk to small children of serious bites or lacerations
- Any animal not permitted under state or local law or code

### **Number of Pets**

#### LHA Policy

Residents may own a maximum of 2 pets, only 1 of which may be a dog.

In the case of fish, residents may keep no more than can be maintained in a safe and healthy manner in a tank holding up

to 10 gallons. Such a tank or aquarium will be counted as 1 pet.

**Other Requirements**

LHA Policy

Dogs and cats must be spayed or neutered at the time of registration or, in the case of underage animals, within 30 days of the pet reaching 6 months of age. Exceptions may be made upon veterinary certification that subjecting this particular pet to the procedure would be temporarily or permanently medically unsafe or unnecessary.

Pets must be licensed in accordance with state or local law. Residents must provide proof of licensing at the time of registration and annually, in conjunction with the resident's annual reexamination.

## **10-II.D. PET RULES**

Pet owners must maintain pets responsibly, in accordance with LHA policies, and in compliance with applicable state and local public health, animal control, and animal cruelty laws and regulations [24 CFR 5.315; 24 CFR 960.707(a)].

### **Pet Area Restrictions**

#### LHA Policy

Pets must be maintained within the resident's unit. When outside of the unit (within the building or on the grounds) dogs and cats must be kept on a leash or carried and under the control of the resident or other responsible individual at all times.

Pets other than dogs or cats must be kept in a cage or carrier when outside of the unit.

Pets are not permitted in common areas including lobbies, community rooms and laundry areas except for those common areas which are entrances to and exits from the building.

### **Designated Pet/No-Pet Areas [24 CFR 5.318(g), PH Occ. GB, p. 182]**

PHAs may designate buildings, floors of buildings, or sections of buildings as no-pet areas where pets generally may not be permitted. Pet rules may also designate buildings, floors of building, or sections of building for residency by pet-owning tenants.

PHAs may direct initial tenant moves as may be necessary to establish pet and no-pet areas. LHA may not refuse to admit, or delay admission of, an applicant on the grounds that the applicant's admission would violate a pet or no-pet area. LHA may adjust the pet and no-pet areas or may direct such additional moves as may be necessary to accommodate such applicants for tenancy or to meet the changing needs of the existing tenants.

PHAs may not designate an entire development as a no-pet area, since regulations permit residents to own pets.

#### LHA Policy

With the exception of common areas as described in the previous policy, LHA has not designated any buildings, floors of buildings, or sections of buildings as no-pet areas. In addition, LHA has not designated any buildings, floors of buildings, or sections of buildings for residency of pet-owning tenants.

### **Cleanliness**

LHA Policy The pet owner shall be responsible for the removal of waste from the property by placing it in a sealed plastic bag and disposing of it in a safe and sanitary manner in a trash can or dumpster. The pet owner shall take adequate precautions to eliminate any pet odors within or around the unit and to maintain the unit in a sanitary condition at all times. Litter box requirements:

- Pet owners must promptly dispose of waste from litter boxes and must maintain litter boxes in a sanitary manner. Litter shall not be disposed of by being flushed through a toilet.
- Litter boxes shall be kept inside the resident's dwelling unit.

### **Alterations to Unit**

#### LHA Policy

Pet owners shall not alter their unit, patio, premises or common areas to create an enclosure for any animal. Installation of pet doors is prohibited.

### **Noise**

#### LHA Policy

Pet owners must agree to control the noise of pets so that such noise does not constitute a nuisance to other residents or interrupt their peaceful enjoyment of their housing unit or premises. This includes, but is not limited to loud or continuous barking, howling, whining, biting, scratching, chirping, or other such activities/behaviors.

### **Pet Care**

#### LHA Policy

Each pet owner shall be responsible for adequate care, nutrition, exercise and medical attention for his/her pet.

Each pet owner shall be responsible for appropriately training and caring for his/her pet to ensure that the pet is not a nuisance or danger to other residents and does not damage LHA property.

No animals may be tethered or chained inside or outside the dwelling unit at any time.

### **Responsible Parties**

#### LHA Policy

The pet owner will be required to designate two responsible parties for the care of the pet if the health or safety of the pet is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet.

A resident who cares for another resident's pet must notify LHA and sign a statement that they agree to abide by all of the pet rules.

### **Pets Temporarily on the Premises**

#### LHA Policy

Pets that are not owned by a tenant are not allowed on the premises. Residents are prohibited from feeding or harboring stray animals.

This rule does not apply to visiting pet programs sponsored by a humane society or other non-profit organizations, and approved by the PHA.

### **Pet Rule Violations**

#### LHA Policy

All complaints of cruelty and all dog bites will be referred to animal control or an applicable agency for investigation and enforcement.

If a determination is made on objective facts supported by written statements, that a resident/pet owner has violated the pet rules, written notice will be served.

The notice will contain a brief statement of the factual basis for the determination and the pet rule(s) that were violated.

The notice will also state:

That the pet owner has 10 business days from the effective date of the service of notice to correct the violation or make written request for a meeting to discuss the violation

That the pet owner is entitled to be accompanied by another person of his or her choice at the meeting

That the pet owner's failure to correct the violation, request a meeting, or appear at a requested meeting may result in initiation of procedures to remove the pet, or to terminate the pet owner's tenancy

### **Notice for Pet Removal**

#### LHA Policy

If the pet owner and LHA are unable to resolve the violation at the meeting or the pet owner fails to correct the violation in the time period allotted by LHA, LHA may serve notice to remove the pet.

The notice will contain:

- A brief statement of the factual basis for LHA's determination of the pet rule that has been violated
- The requirement that the resident /pet owner must remove the pet within 30 calendar days of the notice
- A statement that failure to remove the pet may result in the initiation of termination of tenancy procedures

### **Pet Removal**

#### LHA Policy

If the death or incapacity of the pet owner threatens the health or safety of the pet, or other factors occur that render the owner unable to care for the pet, the situation will be reported to the responsible party designated by the pet owner.

If the responsible party is unwilling or unable to care for the pet, or if LHA after reasonable efforts cannot contact the responsible party, LHA may contact the appropriate state or local agency and request the removal of the pet.

### **Termination of Tenancy**

#### LHA Policy

LHA may initiate procedures for termination of tenancy based on a pet rule violation if:

- The pet owner has failed to remove the pet or correct a pet rule violation within the time period specified
- The pet rule violation is sufficient to begin procedures to terminate tenancy under terms of the lease

### **Emergencies**

#### LHA Policy

LHA will take all necessary steps to ensure that pets that become vicious, display symptoms of severe illness, or demonstrate behavior that constitutes an immediate threat to the health or safety of others, are immediately removed from the premises by referring the situation to the appropriate state or local entity authorized to remove such animals. If it is necessary for LHA to place the pet in a shelter facility, the cost will be the responsibility of the pet owner. If the pet is removed as a result of any aggressive act on the part of the pet, the pet will not be allowed back on the premises. Any charges incurred by LHA due to the removal will be the responsibility of the pet owner.

### **PART III: PET DEPOSITS AND FEES IN LHA DEVELOPMENTS**

#### **10-III.A. OVERVIEW**

This part describes LHA's policies for pet deposits and fees for those who reside in LHA developments.

#### **10-III.B. PET DEPOSITS**

LHA may require a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered [24 CFR 960.707(b)(1)].

A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits, or if there are no such requirements, for rental security deposits, if applicable. LHA must comply with such laws as to retention of the deposit, interest, and return of the deposit to the resident, and any other applicable requirements [24 CFR 960.707(d)].

##### **Payment of Deposit**

###### LHA Policy

Pet owners are required to pay a pet deposit of \$300 in addition to any other required deposits. The deposit must be paid in full before the pet is brought on the premises. The pet deposit is not part of rent payable by the resident.

##### **Refund of Deposit**

###### LHA Policy

LHA will refund the pet deposit to the resident, less the costs of any damages caused by the pet to the dwelling unit, within 30 days of move-out or removal of the pet from the unit. The resident will be billed for any amount that exceeds the pet deposit. LHA will provide the resident with a written list of any charges against the pet deposit within 31 days after the termination of the tenancy and delivery of possession of the unit to LHA. If the resident disagrees with the amount charged to the pet deposit, LHA will provide a meeting to discuss the charges.

#### **10-III.C. OTHER CHARGES Pet-Related Damages During Occupancy**

LHA Policy All reasonable expenses incurred by LHA as a result of damages directly attributable to the presence of the pet in the project will be the responsibility of the resident, including:

- The cost of repairs and replacements to the resident's dwelling unit Fumigation of the dwelling unit Repairs to common areas of the project
- The expense of flea elimination shall also be the responsibility of the resident. If the resident is in occupancy when such costs occur, the resident shall be billed for such costs in accordance with the policies in Section 8-I.G, Maintenance and Damage Charges.
- Pet deposits will not be applied to the costs of pet-related damages during occupancy.
- Charges for pet-related damage are not part of rent payable by the resident.

##### **Pet Waste Removal Charge**

The regulations do not address LHA's ability to impose charges for house pet rule violations. However, charges for violation of LHA pet rules may be treated like charges for other violations of the lease and LHA tenancy rules.

###### LHA Policy

A separate pet waste removal charge of \$10.00 per occurrence will be assessed against pet owners who fail to remove pet waste in accordance with this policy. Such charges will be due and payable 14 calendar days after billing. Charges for pet waste removal are not part of rent payable by the resident.

## **Chapter 11 COMMUNITY SERVICE**

### **INTRODUCTION**

This chapter explains HUD regulations requiring PHAs to implement a community service program for all nonexempt adults living in public housing as described in HUD PIH Notice 2015-12.



This chapter describes HUD regulations and LHA policies related to these topics in two parts:

**Part I: Community Service Requirements.** This part describes who is subject to the community service requirement, which is exempt, and HUD's definition of economic self-sufficiency.

**Part II: LHA Implementation of Community Service.** This part provides LHA policy regarding LHA implementation and program design.

## **PART I: COMMUNITY SERVICE REQUIREMENT**

### **11-1.A. OVERVIEW**

HUD regulations pertaining to the community service requirement are contained in 24 CFR 960 Subpart F (960.600 through 960.609). PHAs and residents must comply with the community service requirement, effective with LHA fiscal years that commenced on or after January 1, 2000. Per 903.7(l)(1)(iii), the LHA Plan must contain a statement of how LHA will comply with the community service requirement, including any cooperative agreement that LHA has entered into or plans to enter into.

Community service is the performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities [24 CFR 960.601(b)].

In administering community service requirements, LHA must comply with all nondiscrimination and equal opportunity requirements [24 CFR 960.605(c) (5)].

### **11-1.B. REQUIREMENTS**

Each adult resident of the PHA, who is not exempt, must [24 CFR 960.603(a)]:

Contribute 8 hours per month of community service; or Participate in an economic self-sufficiency program (as defined in the regulations) for 8 hours per month; or Perform 8 hours per month of combined activities (community service and economic self-sufficiency programs).

#### LHA Policy

An individual may not skip a month and then double up the following month, unless special circumstances warrant it. LHA will make the determination of whether to permit a deviation from the schedule.

Individuals who have special circumstances which they believe will prevent them from completing the required community service hours for a given month, must notify LHA in writing within 5 business days of the circumstances becoming known. LHA will review the request and notify the individual, in writing, of its determination within 10 business days. LHA may require those individuals to provide documentation to support their claim. Even though HUD minimum requirement is to complete at least 8 hours of community service per month, LHA will promote at least 20 hours of community service per month.

#### **Definitions**

##### ***Exempt Individual [24 CFR 960.601(b), Notice PIH 2009-48]***

An *exempt individual* is an adult who:

- Is age 62 years or older
- Is blind or disabled (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability s/he is unable to comply with the service provisions
- Is a primary caretaker of such an individual
- Is engaged in work activities LHA Policy LHA will consider 30 hours per week as the minimum number of hours needed to qualify for a work activity exemption.
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which LHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which LHA is located, including a state-administered welfare-to work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

##### ***Community Service [24 CFR 960.601(b), Notice PIH 2009-48]***

*Community service* is the performance of voluntary work or duties that are a public benefit and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Eligible community service activities include, but are not limited to, work at:

- Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)
- Nonprofit organizations serving LHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children's recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs
- Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels
- Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts
- LHA housing to improve grounds or provide gardens (so long as such work does not alter the LHA's insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board
- Care for the children of other residents so parent may volunteer

PHAs may form their own policy in regards to accepting community services at profit-motivated entities, acceptance of volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work.

#### LHA Policy

LHA will accept community services at profit-motivated entities, volunteer work performed at homes or offices of general private citizens, and court-ordered or probation-based work as eligible community service activities.

#### ***Economic Self-Sufficiency Program [24 CFR 5.603(b), Notice PIH 2009-48]***

For purposes of satisfying the community service requirement, an *economic self-sufficiency program* is defined by HUD as any program designed to encourage, assist, train, or facilitate economic independence of assisted families or to provide work for such families.

Eligible self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

#### ***Work Activities [42 U.S.C. 607(d)]***

As it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment
- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance

- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

**Notification Requirements [24 CFR 960.605(c)(2), Notice PIH 2009-48]**

LHA must give each family a written description of the community service requirement, the process for claiming status as an exempt person, and the process for LHA verification of exempt status. LHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt. In addition, the family must sign a certification, Attachment A, of Notice PIH 2009-48, that they have received and read the policy and understand that if they are not exempt, failure to comply with the requirement will result in nonrenewal of their lease.

LHA Policy

LHA will provide the family with a copy of the Community Service Policy found in Exhibit 11-1 of this chapter, at lease-up, annual review, when a family member is determined to be subject to the community service requirement during the lease term, and at any time upon the family’s request.

On an annual basis, at the time of annual review, LHA will notify the family in writing of the family members who are subject to the community service requirement and the family members who are exempt. If the family includes nonexempt individuals the notice will include a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which they may record the activities they perform and the number of hours contributed. The form will also have a place for a signature by an appropriate official, who will certify to the activities and hours completed.

**11-I.C. DETERMINATION OF EXEMPTION STATUS AND COMPLIANCE [24 CFR 960.605(c) (3)]**

LHA must review and verify family compliance with service requirements annually at least thirty days before the annual reexamination date. The policy for documentation and verification of compliance with service requirements may be found at Section 11-I.D., Documentation and Verification.

LHA Policy

Where the lease term does not coincide with the effective date of the annual reexamination, the LHA will change the effective date of the annual reexamination to coincide with the lease term. In making this change, LHA will ensure that the annual reexamination is conducted within 12 months of the last annual reexamination.

**Annual Determination**

*Determination of Exemption Status*

An exempt individual is excused from the community service requirement [24 CFR 960.603(a)].

LHA Policy

At least 60 days prior to lease renewal, LHA will review and verify the exemption status of all adult family members. This verification will only be done on an annual basis unless the family reports a change or LHA has reason to believe that an individual’s exemption status has changed. For individuals who are exempt because they are 62 years of age and older, verification of exemption status will be done only at the initial examination.

Upon completion of the verification process, LHA will notify the family of its determination in accordance with the policy in Section 11-I.B., Notification Requirements.

*Determination of Compliance*

LHA must review resident family compliance with service requirements annually at least 30 days before the end of the twelve month lease term [24 CFR 960.605(c)(3)]. As part of this review, LHA must verify that any family member that is not exempt from the community service requirement has met his or her service obligation.

LHA Policy

Approximately 60 days prior to the end of the lease term, LHA will provide written notice requiring the family to submit documentation that all subject family members have complied with the service requirement. The family will have 10 business days to submit LHA required documentation form(s).

If the family fails to submit the required documentation within the required timeframe, or LHA approved extension, the subject family members will be considered noncompliant with community service requirements, and notices of noncompliance will be issued pursuant to the policies in Section 11-I.E., Noncompliance.

#### **Change in Status between Annual Determinations**

##### LHA Policy

##### **Exempt to Nonexempt Status**

If an exempt individual becomes nonexempt during the twelve month lease term, it is the family's responsibility to report this change to LHA within 10 business days.

Within 10 business days of a family reporting such a change, or LHA determining such a change is necessary, LHA will provide written notice of the effective date of the requirement, a list of agencies in the community that provide volunteer and/or training opportunities, as well as a documentation form on which the family member may record the activities performed and number of hours contributed.

The effective date of the community service requirement will be the first of the month following 30 day notice.

##### **Nonexempt to Exempt Status**

If a nonexempt person becomes exempt during the twelve month lease term, it is the family's responsibility to report this change to LHA within 10 business days. Any claim of exemption will be verified by LHA in accordance with the policy at 11-I.D., Documentation and Verification of Exemption Status.

Within 10 business days of a family reporting such a change, or LHA determining such a change is necessary, LHA will provide the family written notice that the family member is no longer subject to the community service requirement, if LHA is able to verify the exemption.

The exemption will be effective immediately.

#### **11-I.D. DOCUMENTATION AND VERIFICATION [24 CFR 960.605(c)(4)]**

LHA must retain reasonable documentation of service requirement performance or exemption in participant files.

##### **Documentation and Verification of Exemption Status**

##### LHA Policy

All family members who claim they are exempt from the community service requirement will be required to sign the community service exemption certification form found in Exhibit 11-3. LHA will provide a completed copy to the family and will keep a copy in the tenant file.

LHA will verify that an individual is exempt from the community service requirement by following the verification hierarchy and documentation requirements in Chapter 7.

LHA makes the final determination whether or not to grant an exemption from the community service requirement. If a resident does not agree with the LHA's determination, s/he can dispute the decision through the LHA's grievance procedures (see Chapter 14).

##### **Documentation and Verification of Compliance**

At each regularly scheduled reexamination, each nonexempt family member presents a signed standardized certification form developed by LHA of community service and self-sufficiency activities performed over the last 12 months [Notice PIH 2009-48].

If qualifying community service activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide certification to the PHA, signed by the organization, that the family member has performed the qualifying activities [24 CFR 960.607].

##### LHA Policy

If anyone in the family is subject to the community service requirement, LHA will provide the family with community service documentation forms at admission, at annual reexamination, when a family member becomes subject to the community service requirement during the lease term, or upon request by the family.

Each individual who is subject to the requirement will be required to record their community service or self-sufficiency activities and the number of hours contributed on the required form. The certification form will also include places for signatures and phone numbers of supervisors, instructors, and counselors certifying to the number of hours contributed.

Families will be required to submit the documentation to the PHA, upon request by the PHA. If the LHA has reasonable cause to believe that the certification provided by the family is false or fraudulent, the LHA has the right to require third-party verification.

## **11-1.E. NONCOMPLIANCE**

### **Initial Noncompliance**

The lease specifies that it is renewed automatically for all purposes, unless the family fails to comply with the community service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term [24 CFR 960.603(b)].

If the tenant or another family member has violated the community service requirement, LHA may not renew the lease unless the tenant and any other noncompliant family member enter into a written agreement with the PHA. Under this agreement the tenant or noncompliant family member must agree to cure the noncompliance by completing the additional hours of community service or economic self-sufficiency needed to make up the total number of hours required, over the twelve-month term until the next annual reexamination. In addition, all other members of the family who are subject to the service requirement must be currently complying with the service requirement or must no longer be residing in the unit [24 CFR 960.607(c), Notice PIH 2009-48].

### ***Notice of Initial Noncompliance [24 CFR 960.607(b)]***

If LHA determines that there is a family member who is required to fulfill a service requirement, but who has failed to comply with this obligation (noncompliant resident), LHA must notify the tenant of this determination.

The notice to the tenant must briefly describe the noncompliance. The notice must state that LHA will not renew the lease at the end of the twelve-month lease term unless the tenant, and any other noncompliant resident, enter into a written agreement with LHA to cure the noncompliance, or the family provides written assurance satisfactory to LHA that the tenant or other noncompliant resident no longer resides in the unit.

The notice must also state that the tenant may request a grievance hearing on the LHA's determination, in accordance with the LHA's grievance procedures, and that the tenant may exercise any available judicial remedy to seek timely redress for the LHA's nonrenewal of the lease because of the LHA's determination.

### **LHA Policy**

The notice of initial noncompliance will be sent at least 45 days prior to the annual reexamination date.

The family will have 10 business days from the date of the notice of noncompliance to enter into a written agreement to cure the noncompliance over the 12 months until the next annual reexamination date, provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before LHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the family member that previously resided with them.

If the family does not request a grievance hearing, or does not take either corrective action required by the notice of noncompliance within the required 10 business day timeframe, LHA will terminate tenancy in accordance with the policies in Section 13IV.D.

If, after the 12 month cure period, the family member is still not compliant, LHA must terminate tenancy of the entire family, according to the LHA's lease, unless the family provides documentation that the noncompliant resident no longer resides in the unit.

### **LHA Policy**

Notices of continued noncompliance will be sent at least 30 days prior to the annual reexamination date and will also serve as the family's termination notice. The notice will meet the requirements for termination notices described in Section 13-IV.D, Form, Delivery, and Content of the Notice.

The family will have 14 days from the date of the notice of non-compliance to provide documentation that the noncompliant resident no longer resides in the unit, or to request a grievance hearing.

If the family reports that a noncompliant family member is no longer residing in the unit, the family must provide documentation that the family member has actually vacated the unit before LHA will agree to continued occupancy of the family. Documentation must consist of a certification signed by the head of household as well as evidence of the current address of the noncompliant family member that previously resided with them.

If the family does not request a grievance hearing, or provide such documentation within the required 14 day timeframe, the family's lease and tenancy will automatically terminate at the end of the 30 day notice of noncompliance without further notice.

#### **Enforcement Documentation [Notice PIH 2009-48]**

PHAs are required to initiate due process (see 24 CFR 966.53(c)) against households failing to comply with lease requirements including the community service and self-sufficiency requirement. When initiating due process, LHA must take the following procedural safeguards: Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction Right of the tenant to be represented by counsel

Opportunity for the tenant to refute the evidence presented by the PHA, including the right to confront and cross-examine witnesses and presents any affirmative legal or equitable defense which the tenant may have  
A decision on merits

## **PART II: IMPLEMENTATION OF COMMUNITY SERVICE**

### **11-II.A. OVERVIEW**

Each LHA must develop a policy for administration of the community service and economic self-sufficiency requirements for public housing. It is in the LHA's best interests to develop a viable, effective community service program, to provide residents the opportunity to engage in the community and to develop competencies.

#### **LHA Implementation of Community Service**

LHA may not substitute any community service or self-sufficiency activities performed by residents for work ordinarily performed by LHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement [24 CFR 960.609].

#### LHA Policy

LHA will notify its insurance company if residents will be performing community service at the PHA. In addition, LHA will ensure that the conditions under which the work is to be performed are not hazardous.

If a disabled resident certifies that s/he is able to perform community service, LHA will ensure that requests for reasonable accommodation are handled in accordance with the policies in Chapter 2.

#### **LHA Program Design**

LHA may administer qualifying community service or economic self-sufficiency activities directly, or may make community service activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions [24 CFR 960.605(b)].

#### LHA Policy

LHA will attempt to provide the broadest choice possible to residents as they choose community service activities. The LHA's goal is to design a service program that gives residents viable opportunities to become involved in the community and to gain competencies and skills. LHA will work with resident organizations and community organizations to design, implement, assess and recalibrate its community service program.

LHA will make every effort to identify volunteer opportunities throughout the community, especially those in proximity to public housing developments. To the greatest extent possible, LHA will provide names and contacts at agencies that can provide opportunities for residents, including persons with disabilities, to fulfill their community service obligations. Any written agreements or partnerships with contractors and/or qualified organizations, including resident organizations, are described in LHA Plan.

LHA will provide in-house opportunities for volunteer work or self-sufficiency programs when possible.

When LHA has a ROSS program, a ROSS Service Coordinator, or an FSS program, LHA will coordinate individual training and service plans (ITSPs) with the community service requirement. Regular meetings with LHA coordinators will satisfy community service activities and LHA coordinators will verify community service hours within individual monthly logs.

## **EXHIBIT 11-1: COMMUNITY SERVICE AND SELF-SUFFICIENCY POLICY**

### **A. Background**

The Quality Housing and Work Responsibility Act of 1998 requires that all nonexempt (see definitions) public housing adult residents (18 or older) contribute eight (8) hours per month of community service (volunteer work) or participate in eight (8) hours of training, counseling, classes or other activities that help an individual toward self-sufficiency and economic independence. This is a requirement of the public housing lease.

## **B. Definitions**

**Community Service** – community service activities include, but are not limited to, work at:

Local public or nonprofit institutions such as schools, head start programs, before or after school programs, child care centers, hospitals, clinics, hospices, nursing homes, recreation centers, senior centers, adult day care programs, homeless shelters, feeding programs, food banks (distributing either donated or commodity foods), or clothes closets (distributing donated clothing)

Nonprofit organizations serving LHA residents or their children such as: Boy or Girl Scouts, Boys or Girls Club, 4-H clubs, Police Assistance League (PAL), organized children’s recreation, mentoring or education programs, Big Brothers or Big Sisters, garden centers, community clean-up programs, beautification programs

Programs funded under the Older Americans Act, such as Green Thumb, Service Corps of Retired Executives, senior meals programs, senior centers, Meals on Wheels

Public or nonprofit organizations dedicated to seniors, youth, children, residents, citizens, special-needs populations or with missions to enhance the environment, historic resources, cultural identities, neighborhoods, or performing arts

LHA housing to improve grounds or provide gardens (so long as such work does not alter the LHA’s insurance coverage); or work through resident organizations to help other residents with problems, including serving on the Resident Advisory Board

Care for the children of other residents so parent may volunteer

**Note:** Political activity is excluded.

**Self-Sufficiency Activities** – self-sufficiency activities include, but are not limited to:

- Job readiness or job training
- Training programs through local one-stop career centers, workforce investment boards (local entities administered through the U.S. Department of Labor), or other training providers
- Employment counseling, work placement, or basic skills training
- Education, including higher education (junior college or college), GED classes, or reading, financial, or computer literacy classes
- Apprenticeships (formal or informal)
- English proficiency or English as a second language classes
- Budgeting and credit counseling
- Any activity required by the Department of Public Assistance under Temporary Assistance for Needy Families (TANF)
- Any other program necessary to ready a participant to work (such as substance abuse or mental health counseling)

**Exempt Adult** – an adult member of the family who meets any of the following criteria:

- Is 62 years of age or older
- Is blind or a person with disabilities (as defined under section 216[i][I] or 1614 of the Social Security Act), and who certifies that because of this disability he or she is unable to comply with the service provisions, or is the primary caretaker of such an individual
- Is engaged in *work activities*
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which LHA is located, including a state-administered welfare-to-work program; or
- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which LHA is located, including a state-administered welfare-to work program, and has not been found by the state or other administering entity to be in noncompliance with such program.

**Work Activities** – as it relates to an exemption from the community service requirement, *work activities* means:

- Unsubsidized employment
- Subsidized private sector employment

- Subsidized public sector employment
- Work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available
- On-the-job training
- Job search and job readiness assistance
- Community service programs
- Vocational educational training (not to exceed 12 months with respect to any individual)
- Job skills training directly related to employment (OST and MST programs)
- Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency
- Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate
- Provision of child care services to an individual who is participating in a community service program

### **C. Requirements of the Program**

The eight (8) hours per month may be either volunteer work or self-sufficiency program activity, or a combination of the two.

At least eight (8) hours of activity must be performed each month. An individual may not skip a month and then double up the following month, unless special circumstances warrant special consideration. The housing authority will make the determination of whether to allow or disallow a deviation from the schedule based on a family's written request.

Family obligation:

At lease execution, all adult members (18 or older) of a public housing resident family must:

- Sign a certification (Attachment A) that they have received and read this policy and understand that if they are not exempt, failure to comply with the community service requirement will result in a nonrenewal of their lease; and
- Declare if they are exempt. If exempt, they must complete the Exemption Form (Exhibit 11-3) and provide documentation of the exemption.

Upon written notice from the PHA, nonexempt family members must present complete documentation of activities performed during the applicable lease term. This documentation will include places for signatures of supervisors, instructors, or counselors, certifying to the number of hours contributed.

If a family member is found to be noncompliant at the end of the 12-month annual reexamination, he or she, and the head of household, will be required to sign an agreement with the housing authority to make up the deficient hours over the next twelve (12) month period, or the lease will be terminated.

Change in exempt status:

If, during the twelve (12) month lease period, a nonexempt person becomes exempt, it is his or her responsibility to report this to LHA and provide documentation of exempt status.

If, during the twelve (12) month lease period, an exempt person becomes nonexempt, it is his or her responsibility to report this to the PHA. Upon receipt of this information LHA will provide the person with the appropriate documentation form(s) and a list of agencies in the community that provide volunteer and/or training opportunities.

### **D. Authority Obligation**

To the greatest extent possible and practicable, LHA will:

1. Provide names and contacts at agencies that can provide opportunities for residents, including residents with disabilities, to fulfill their community service obligations.

Provide in-house opportunities for volunteer work or self-sufficiency activities.

2. LHA will provide the family with a copy of this policy, and all applicable exemption verification forms and community service documentation forms, at lease-up, lease renewal, when a family member becomes subject to the community service requirement during the lease term, and at any time upon the family's request.
3. Although exempt family members will be required to submit documentation to support their exemption, LHA will verify the exemption status in accordance with its verification policies. LHA will make the final determination as to whether or not a family member is exempt from the community service requirement. Residents may use the LHA's grievance procedure if they disagree with the LHA's determination.

4. Noncompliance of family member:



- At least thirty (30) days prior to the end of the 12-month annual reexamination date, LHA will begin reviewing the exempt or nonexempt status and compliance of family members; LHA will secure a certification of compliance from nonexempt family members (Attachment B). If, at the end of the initial 12-month annual reexamination under which a family member is subject to the community service requirement, LHA finds the family member to be noncompliant, LHA will not renew the lease unless:
  - The head of household and any other noncompliant resident enter into a written agreement with the PHA, to make up the deficient hours over the next twelve (12) month period; or
  - The family provides written documentation satisfactory to LHA that the noncompliant family member no longer resides in the unit.

If, at the end of the next 12-month annual reexamination term, the family member is still not compliant, a 30-day notice to terminate the lease will be issued and the entire family will have to vacate, unless the family provides written documentation satisfactory to LHA that the noncompliant family member no longer resides in the unit; The family may use the LHA’s grievance procedure to dispute the lease termination.

All adult family members must sign and date below, certifying that they have read and received a copy of this Community Service and Self-Sufficiency Policy.

**EXHIBIT 11-2: DEFINITION OF A PERSON WITH A DISABILITY UNDER SOCIAL SECURITY ACTS 216(i) (I) and Section 1416(excerpt) FOR PURPOSES OF EXEMPTION FROM COMMUNITY SERVICE Social Security Act:**

**216(i)(1):** Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term “disability” means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term “blindness” means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

**Section 1416 (excerpt):** SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term “aged, blind, or disabled individual” means an individual who— (A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and (B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act), or (ii) is a child who is a citizen of the United States and, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States. (2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined. (3)(A) Except as provided in subparagraph (C), an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.

**EXHIBIT 11-3: LHA DETERMINATION OF EXEMPTION FOR COMMUNITY SERVICE**

Family: \_\_\_\_\_

Adult family member: \_\_\_\_\_

This adult family member meets the requirements for being exempted from the LHA’s community service requirement for the following reason:

62 years of age or older (*Documentation of age in file*)

Is a person with disabilities and self-certifies below that he or she is unable to comply with the community service requirement (*Documentation of HUD definition of disability in file*)

**Tenant certification:** I am a person with disabilities and am unable to comply with the community service requirement.

Signature of Family Member Date

- Is the primary caretaker of such an individual in the above category. (*Documentation in file*)
- Is engaged in work activities (*Verification in file*)
- Is able to meet requirements under a state program funded under part A of title IV of the Social Security Act, or

under any other welfare program of the state in which LHA is located, including a state-administered welfare-to-work program (*Documentation in file*)

- Is a member of a family receiving assistance, benefits, or services under a state program funded under part A of title IV of the Social Security Act, or under any other welfare program of the state in which LHA is located, including a state-administered welfare to-work program, and has not been found by the state or other administering entity to be in noncompliance with such program (*Documentation in file*)

\_\_\_\_\_  
Signature of Family Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of LHA Official

\_\_\_\_\_  
Date

## Chapter 12 TRANSFER POLICY

### INTRODUCTION

This chapter explains the LHA’s transfer policy, based on HUD regulations, HUD guidance, and LHA Policy decisions. This chapter describes HUD regulations and LHA policies related to transfers in four parts:

Part I: Emergency Transfers. This part describes emergency transfers, emergency transfer procedures, and payment of transfer costs.

Part II: LHA Required Transfers. This part describes types of transfers that may be required by the LHA, notice requirements, and payment of transfer costs.

Part III: Transfers Requested by Residents. This part describes types of transfers that may be requested by residents, eligibility requirements, security deposits, payment of transfer costs, and handling of transfer requests.

Part IV: Transfer Processing. This part describes creating a waiting list, prioritizing transfer requests, the unit offer policy, examples of good cause, de-concentration, transferring to another development and reexamination.

LHA may require the tenant to move from the unit under some circumstances. There are also emergency circumstances under which alternate accommodations for the tenant must be provided, that may or may not require a transfer.

The tenant may also request a transfer, such as a request for a new unit as a reasonable accommodation.

LHA must have specific policies in place to deal with acceptable transfer requests.

## **PART I: EMERGENCY TRANSFERS**

### **12-I.A. OVERVIEW**

HUD categorizes certain actions as emergency transfers [PH Occ GB, p. 147]. The emergency transfer differs from a typical transfer in that it requires immediate action by the LHA.

In the case of a genuine emergency, it may be unlikely that LHA will have the time or resources to immediately transfer a tenant. Due to the immediate need to vacate the unit, placing the tenant on a transfer waiting list would not be appropriate.

Under such circumstances, if an appropriate unit is not immediately available, LHA should find alternate accommodations for the tenant until the emergency passes, or a permanent solution, i.e., return to the unit or transfer to another unit, is reached.

### **12-I.B. EMERGENCY TRANSFERS**

If the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants, LHA must offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time [24 CFR 966.4(h)].

The VAWA 2013 final rule requires the PHA to adopt an emergency transfer plan for victims of domestic violence, dating violence, sexual assault, or stalking.

#### LHA Policy

The following are considered emergency circumstances warranting an immediate transfer of the tenant or family: Maintenance conditions in the resident's unit, building or at the site that pose an immediate, verifiable threat to the life, health or safety of the resident or family members that cannot be repaired or abated within 24 hours. Examples of such unit or building conditions would include: a gas leak; no heat in the building during the winter; no water; toxic contamination; and serious water leaks.

A verified incident of domestic violence, dating violence, sexual assault, or stalking. For instances of domestic violence, dating violence, sexual assault, or stalking, the threat may be established through documentation outlined in section 16-VII.D, or by any proof accepted by the PHA.

The PHA will immediately process requests for transfers due to domestic violence, dating violence, sexual assault, or stalking. The PHA will allow a tenant to make an internal emergency transfer under VAWA when a safe unit is immediately available. If an internal transfer to a safe unit is not immediately available, the PHA will assist the resident in seeking an external emergency transfer either within or outside the PHA's programs.

The PHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.

### **12-I.C. EMERGENCY TRANSFER PROCEDURES**

#### LHA Policy

If the transfer is necessary because of maintenance conditions, and an appropriate unit is not immediately available, LHA will provide temporary accommodations to the tenant by arranging for temporary lodging at a hotel or similar location. If the conditions that required the transfer cannot be repaired, or the condition cannot be repaired in a reasonable amount of time, LHA will transfer the resident to the first available and appropriate unit after the temporary relocation. Emergency

transfers are mandatory for the tenant.

#### **12-I.D. COSTS OF EMERGENCY TRANSFER**

##### LHA Policy

LHA will bear the reasonable costs of temporarily accommodating the tenant and of long term transfers, if any, due to emergency conditions.

The reasonable cost of transfers includes the cost of packing, moving, and unloading.

LHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading.

To establish typical costs, LHA will collect information from companies in the community that provide these services.

LHA will reimburse the family for eligible out-of-pocket moving expenses up to the LHA's established moving allowance.

### **PART II: LHA REQUIRED TRANSFERS**

#### **12-II.A. OVERVIEW**

HUD regulations regarding transfers are minimal, leaving it up to LHA to develop reasonable transfer policies.

LHA may require that a resident transfer to another unit under some circumstances. For example, LHA may require a resident to transfer to make an accessible unit available to a disabled family. LHA may also transfer a resident in order to maintain occupancy standards based on family composition. Finally, a LHA may transfer residents in order to demolish or renovate the unit.

A transfer that is required by LHA is an adverse action, and is subject to the notice requirements for adverse actions [24 CFR 966.4(e)(8)(i)].

## **12-II.B. TYPES OF LHA REQUIRED TRANSFERS**

### LHA Policy

The types of transfers that may be required by the LHA, include, but are not limited to, transfers to make an accessible unit available for a disabled family, transfers to comply with occupancy standards, transfers for demolition, disposition, revitalization, or rehabilitation, and emergency transfers as discussed in Part I of this chapter. Transfers required by LHA are mandatory for the tenant.

### **Transfers to Make an Accessible Unit Available**

When a family is initially given an accessible unit, but does not require the accessible features, LHA may require the family to agree to move to a non-accessible unit when it becomes available [24 CFR 8.27(b)].

### LHA Policy

When a non-accessible unit becomes available, LHA will transfer a family living in an accessible unit that does not require the accessible features, to an available unit that is not accessible. LHA may wait until a disabled resident requires the accessible unit before transferring the family that does not require the accessible features out of the accessible unit.

### **Occupancy Standards Transfers**

LHA may require a resident to move when a reexamination indicates that there has been a change in family composition, and the family is either overcrowded or over-housed according to LHA Policy[24 CFR 960.257(a)(4)]. On some occasions, LHA may initially place a resident in an inappropriately sized unit at lease-up, where the family is over- housed, to prevent vacancies. The public housing lease must include the tenant's agreement to transfer to an appropriately sized unit based on family composition [24 CFR 966.4(c)(3)].

### LHA Policy

LHA will transfer a family when the family size has changed and the family is now too large (overcrowded) or too small (over-housed) for the unit occupied.

For purposes of the transfer policy, overcrowded and over-housed are defined as follows:

*Overcrowded*: the number of household members exceeds the maximum number of persons allowed for the unit size in which the family resides, according to the chart in Section 5-I.B.

*Over-housed*: the family no longer qualifies for the bedroom size in which they are living based on the LHA's occupancy standards as described in Section 5 I.B.

LHA may also transfer a family who was initially placed in a unit in which the family was over-housed to a unit of an appropriate size based on the LHA's occupancy standards, when LHA determines there is a need for the transfer.

LHA may elect not to transfer an over-housed family in order to prevent vacancies.

A family that is required to move because of family size will be advised by LHA that a transfer is necessary and that the family has been placed on the transfer list.

Families that request and are granted an exception to the occupancy standards (for either a larger or smaller size unit) in accordance with the policies in Section 5-I.C. will only be required to transfer if it is necessary to comply with the approved exception.

### **Demolition, Disposition, Revitalizations, or Rehabilitation Transfers**

These transfers permit LHA to demolish, sell or do major capital or rehabilitation work at a building site [PH Occ. GB, page 148].

### LHA Policy

LHA will relocate a family when the unit or site in which the family lives is undergoing major rehabilitation that requires the unit to be vacant, or the unit is being disposed of or demolished. The LHA's relocation plan may or may not require transferring affected families to other available public housing units.

If the relocation plan calls for transferring public housing families to other public housing units, affected families will be placed on the transfer list.

In cases of revitalization or rehabilitation, the family may be offered a temporary relocation if allowed under Relocation Act provisions, and may be allowed to return to their unit, depending on contractual and legal obligations, once revitalization or rehabilitation is complete.

### **12-II.C. ADVERSE ACTION [24 CFR 966.4(e)(8)(i)]**

A LHA required transfer is an adverse action. As an adverse action, the transfer is subject to the requirements regarding notices of adverse actions. If the family requests a grievance hearing within the required timeframe, LHA may not take action on the transfer until the conclusion of the grievance process.

### **12-II.D. COST OF TRANSFER**

#### LHA Policy

LHA will bear the reasonable costs of transfers that LHA requires, except that residents will be required to bear the cost of occupancy standards transfers.

The reasonable costs of transfers include the cost of packing, moving, and unloading.

LHA will establish a moving allowance based on the typical costs in the community of packing, moving, and unloading.

To establish typical costs, LHA will collect information from companies in the community that provide these services.

LHA will reimburse the family for eligible out-of-pocket moving expenses up to the LHA's established moving allowance.

## **PART III: TRANSFERS REQUESTED BY TENANTS**

### **12-III.A. OVERVIEW**

HUD provides LHA with discretion to consider transfer requests from tenants. The only requests that LHA is required to consider are requests for reasonable accommodation. All other transfer requests are at the discretion of the LHA. To avoid administrative costs and burdens, this policy limits the types of requests that will be considered by the LHA.

Some transfers that are requested by tenants should be treated as higher priorities than others due to the more urgent need for the transfer.

### **12-III.B. TYPES OF RESIDENT REQUESTED TRANSFERS**

#### LHA Policy

The types of requests for transfers that LHA will consider are limited to requests for transfers to alleviate a serious or life-threatening medical condition, transfers due to a threat of physical harm or criminal activity, reasonable accommodation, transfers to a different unit size as long as the family qualifies for the unit according to the LHA's occupancy standards, and transfers to a location closer to employment. No other transfer requests will be considered by the LHA.

LHA will consider the following as high priority transfer requests:

- When a transfer is needed to alleviate verified medical problems of a serious or life-threatening nature
- When there has been a verified threat of physical harm or criminal activity. Such circumstances may, at the LHA's discretion, include an assessment by law enforcement indicating that a family member is the actual or potential victim of a criminal attack, retaliation for testimony, or a hate crime.
- When a family requests a transfer as a reasonable accommodation. Examples of a reasonable accommodation transfer include, but are not limited to, a transfer to a first floor unit for a person with mobility impairment, or a transfer to a unit with accessible features

LHA will consider the following as regular priority transfer requests:

- When a family requests a larger bedroom size unit even though the family does not meet the LHA's definition of overcrowded, as long as the family meets the LHA's occupancy standards for the requested size unit
- When the head of household or spouse is employed 25 miles or more from the public housing unit, has no reliable transportation and public transportation is not adequate
- Transfers requested by the tenant are considered optional for the tenant.

### **12-III.C. ELIGIBILITY FOR TRANSFER**

Transferring residents do not have to meet the admission eligibility requirements pertaining to income or preference. However, LHA may establish other standards for considering a transfer request [PH Occ GB, p. 150].

### PHA Policy

Except where reasonable accommodation is being requested, LHA will only consider transfer requests from residents that meet the following requirements:

- Have not engaged in criminal activity that threatens the health and safety of residents and staff
- Owe no back rent or other charges, or have a pattern of late payment
- Have no housekeeping lease violations or history of damaging property
- Can get utilities turned on in the name of the head of household (applicable only to properties with tenant-paid utilities)
- A resident with housekeeping standards violations will not be transferred until the resident passes a follow-up housekeeping inspection.

Exceptions to the good record requirement may be made when it is to the LHA's advantage to make the transfer.

Exceptions may also be made when LHA determines that a transfer is necessary to protect the health or safety of a resident who is a victim of domestic violence, dating violence, or stalking and who provides documentation of abuse in accordance with section 16-VII.D of this ACOP.

If a family requested to be placed on the waiting list for a unit size smaller than designated by the occupancy guidelines, the family will not be eligible to transfer to a larger size unit for a period of two years from the date of admission, unless they have a change in family size or composition, or it is needed as a reasonable accommodation.

### **12-III.D. SECURITY DEPOSITS**

#### LHA Policy

When a family transfers from one unit to another, LHA will transfer their security deposit to the new unit. The tenant will be billed for any maintenance or others charges due for the "old" unit.

### **12-III.E. COST OF TRANSFER**

LHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability [Notice PIH 2006-13].

#### LHA Policy

The resident will bear all of the costs of transfer s/he requests. However, LHA will bear the transfer costs when the transfer is done as a reasonable accommodation.

### **12-III.F. HANDLING OF REQUESTS**

#### LHA Policy

Residents requesting a transfer to another unit or development will be required to submit a written request for transfer. In case of a reasonable accommodation transfer, LHA will encourage the resident to make the request in writing using a reasonable accommodation request form. However, LHA will consider the transfer request any time the resident indicates that an accommodation is needed whether or not a formal written request is submitted.

LHA will respond by approving the transfer and putting the family on the transfer list, by denying the transfer, or by requiring more information or documentation from the family, such as documentation of domestic violence, dating violence, or stalking in accordance with section 16-VII.D of this ACOP.

If the family does not meet the "good record" requirements under Section 12-III.C., the manager will address the problem and, until resolved, the request for transfer will be denied.

LHA will respond within ten (10) business days of the submission of the family's request. If LHA denies the request for transfer, the family will be informed of its grievance rights.

## **PART IV: TRANSFER PROCESSING**

### **12-IV.A. OVERVIEW**

Generally, transfers should be placed on a transfer list and handled in the appropriate order. The transfer process must be clearly auditable to ensure that residents do not experience disparate treatment.

## **12-IV.B. TRANSFER LIST**

### LHA Policy

LHA will maintain a centralized transfer list to ensure that transfers are processed in the correct order and that procedures are uniform across all properties.

Emergency transfers will not automatically go on the transfer list. Instead emergency transfers will be handled immediately, on a case by case basis. If the emergency will not be finally resolved by a temporary accommodation, and the resident requires a permanent transfer, that transfer will be placed at the top of the transfer list.

Transfers will be processed in the following order:

- Emergency transfers (hazardous maintenance conditions)
- High-priority transfers (verified medical condition, threat of harm or criminal activity, and reasonable accommodation)
- Transfers to make accessible units available
- Demolition, renovation, etc.
- Occupancy standards
- Other LHA-required transfers
- Transfers for access to employment.

Within each category, transfers will be processed in order of the date a family was placed on the transfer list, starting with the earliest date. With the approval of the executive director or designee, LHA may, on a case-by-case basis, transfer a family without regard to its placement on the transfer list in order to address the immediate need of a family in crisis.

Demolition and renovation transfers will gain the highest priority as necessary to allow LHA to meet the demolition or renovation schedule. Transfers will take precedence over waiting list admissions.

## **12-IV.C. TRANSFER OFFER POLICY**

### LHA Policy

Residents will receive one offer of a transfer. When the transfer is required by the LHA, refusal of that offer without good cause will result in lease termination.

## **12-IV.D. GOOD CAUSE FOR UNIT REFUSAL**

### LHA Policy

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- The family demonstrates to the LHA's satisfaction that accepting the unit offer will require an adult household member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities.
- The family demonstrates to the LHA's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders, other court orders, risk assessments related to witness protection from a law enforcement agency, or documentation of domestic violence, dating violence, or stalking in accordance with section 16-VII.D of this ACOP. Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption.
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on final application) or live-in aide necessary to the care of the principal household member.
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move.
- The unit has lead-based paint and the family includes children under the age of six. LHA will require documentation of good cause for unit refusals.

## **12-IV.E. DECONCENTRATION**

### LHA Policy

If subject to de-concentration requirements, LHA will consider its de-concentration goals when transfer units are offered. When feasible, families above the Established Income Range will be offered a unit in a development that is below the Established Income Range, and vice versa, to achieve the LHA's de-concentration goals. A de-concentration offer will be



considered a “bonus” offer; that is, if a resident refuses a de-concentration offer, the resident will receive one additional transfer offer.

## **12-IV.F. REEXAMINATION POLICIES FOR TRANSFERS**

### LHA Policy

The reexamination date will be changed to the first of the month in which the transfer took place.

## **Chapter 13 LEASE TERMINATIONS**

### **INTRODUCTION**

Either party in a lease agreement may terminate the lease under certain circumstances. A public housing lease is different from a private dwelling lease in that the family’s rental assistance is tied to their tenancy. When the family moves from their public housing unit, they lose their rental assistance. Therefore, there are additional safeguards to protect the family’s tenancy in public housing.

Likewise, there are safeguards to protect HUD’s interest in the public housing program, to assure that qualified families are provided decent, safe, and sanitary housing which is in good repair. LHA may terminate the lease because of the family’s failure to comply with HUD regulations, for serious or repeated violations of the terms of the lease, and for other good cause. HUD regulations specify some reasons for which a PHA can terminate a family’s lease, and give PHAs authority to determine other reasons.

When determining LHA Policy on terminations, state and local landlord-tenant laws must be considered, since such laws could vary from one location to another. These variances may be either more or less restrictive than federal law or HUD regulation.

This chapter presents the policies that govern both the family’s and LHA’s termination of the lease. It is presented in four parts:

Part I: Termination by Tenant. This part discusses the family’s voluntary termination of the lease and the requirements LHA places upon families who wish to terminate their lease.

Part II: Termination by LHA -Mandatory. This part describes the policies that govern how, and under what circumstances, a mandatory lease termination by LHA occurs. This part also includes nonrenewal of the lease for noncompliance with community service requirements.

Part III: Termination by LHA – Other Authorized Reasons. This part describes LHA’s options for lease termination that are not mandated by HUD regulation but for which HUD authorizes PHAs to terminate. For some of these options HUD requires LHA to establish policies and lease provisions for termination, but termination is not mandatory. For other options LHA has full discretion whether to consider the options as just cause to terminate as long as LHA policies are reasonable, nondiscriminatory, and do not violate state or local landlord-tenant law. This part also discusses the alternatives that LHA may consider in lieu of termination, and the criteria LHA will use when deciding what actions to take.

Part IV: Notification Requirements. This part presents the federal requirements for disclosure of criminal records to the family prior to termination, the HUD requirements and LHA policies regarding the timing and content of written notices for lease termination and eviction, and notification of the post office when eviction is due to criminal activity. This part also discusses record keeping related to lease termination.

## **PART I: TERMINATION BY TENANT**

### **13-1.A. TENANT CHOOSES TO TERMINATE THE LEASE [24 CFR 966.4(k)(1)(ii) and 24 CFR 966.4(l)(1)]**

The family may terminate the lease at any time, for any reason, by following the notification procedures as outlined in the lease. Such notice must be in writing and delivered to the project office or LHA central office or sent by pre-paid first-class mail, properly addressed.

### LHA Policy

If a family desires to move and terminate their tenancy with LHA, they must give at least 30 calendar days advance written notice to LHA of their intent to vacate. When a family must give less than 30 days’ notice due to circumstances beyond their control LHA, at its discretion, may waive the 30 day requirement.

The notice of lease termination must be signed by the head of household, spouse, or co-head.

In the event a family desires to cancel their 30 day notice to terminate their tenancy and such cancellation is approved by LHA any new submissions of termination of tenancy must give a new 30 day notice.

## **PART II: TERMINATION BY LHA – MANDATORY**

### **13-II.A. OVERVIEW**

HUD requires LHA to terminate the lease in certain circumstances. In other circumstances HUD requires LHA to establish provisions for lease termination, but it is still a LHA option to determine, on a case-by-case basis, whether termination is warranted. For those tenant actions or failures to act where HUD requires termination, LHA has no such option. In those cases, the family's lease must be terminated. This part describes situations in which HUD requires LHA to terminate the lease.

### **13-II.B. FAILURE TO PROVIDE CONSENT [24 CFR 960.259(a) and (b)]**

LHA must terminate the lease if any family member fails to sign and submit any consent form s/he is required to sign for any reexamination. See Chapter 7 for a complete discussion of consent requirements.

**13-II.C. FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 5.514(c) and (d) and 24 CFR 960.259(a)]** LHA must terminate the lease if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family, resulting in no eligible family members; or (3) a family member, as determined by LHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (4), such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

### **13-II.D. FAILURE TO DISCLOSE AND DOCUMENT SOCIAL SECURITY NUMBERS [24 CFR 5.218(c), 24 CFR 960.259(a)(3), Notice PIH2012-10]**

LHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and LHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, LHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date LHA determined the family to be noncompliant.

#### LHA Policy

LHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

See Chapter 7 for a complete discussion of documentation and certification requirements.

### **13-II.E. FAILURE TO ACCEPT LHA'S OFFER OF A LEASE REVISION [24 CFR 966.4(l)(2)(ii)(E)]**

LHA must terminate the lease if the family fails to accept LHA's offer of a lease revision to an existing lease, provided LHA has done the following:

- The revision is on a form adopted by LHA in accordance with 24 CFR 966.3 pertaining to requirements for notice to tenants and resident organizations and their opportunity to present comments.
- LHA has made written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect.
- LHA has specified in the offer a reasonable time limit within that period for acceptance by the family.

See Chapter 8 for information pertaining to LHA policies for offering lease revisions.

### **13-II.F. METHAMPHETAMINE CONVICTION [24 CFR 966.4(l)(5)(i)(A)]**

LHA must immediately terminate the lease if LHA determines that any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing. See Part 13-III.B. below for the HUD definition of *premises*.

### **13-III.G. NONCOMPLIANCE WITH COMMUNITY SERVICE REQUIREMENTS [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)(2)(ii) and (c)]**

LHA is prohibited from renewing the lease at the end of the 12 month lease term when the family fails to comply with the community service requirements as described in Chapter 11.

### **13-III.H. DEATH OF A SOLE FAMILY MEMBER [Notice PIH2012-10]**

LHA must immediately terminate program assistance for deceased single member households.

## **PART III: TERMINATION BY LHA – OTHER AUTHORIZED REASONS**

### **13-III.A. OVERVIEW**

Besides requiring PHAs to terminate the lease under the circumstances described in Part II, HUD requires LHA to establish provisions in the lease for termination pertaining to certain criminal activity, alcohol abuse, and certain household obligations stated in the regulations. While these provisions for lease termination must be in the lease agreement, HUD does not require PHAs to terminate for such violations in all cases. LHA has the discretion to consider circumstances surrounding the violation or, in applicable situations, whether the offending household member has entered or completed rehabilitation, and LHA may, as an alternative to termination, require the exclusion of the culpable household member. LHA must make policy decisions concerning these options.

In addition, HUD authorizes PHAs to terminate the lease for other grounds, but for only those grounds that constitute serious or repeated violations of material terms of the lease or that are for other good cause. LHA must develop policies pertaining to what constitutes serious or repeated lease violations, and other good cause, based upon the content of LHA lease. In the development of the terms of the lease, LHA must consider the limitations imposed by state and local landlord-tenant law, as well as HUD regulations and federal statutes. Because of variations in state and local landlord-tenant law, and because HUD affords PHAs wide discretion in some areas, a broad range of policies could be acceptable. LHA, ~~with some restrictions~~, also has the option to terminate the tenancies of ~~certain families who are~~ over income families. LHA may consider alternatives to termination and must establish policies describing the criteria LHA will use when deciding what action to take, the types of evidence that will be acceptable, and the steps LHA must take when terminating a family's lease.

### **13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(l)(5)]**

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore LHA policies are needed.

#### ***Definitions* [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

- *Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.
- *Dating violence* is defined in section 16-VII.B.
- *Domestic violence* is defined in section 16-VII.B.
- *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].
- *Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.
- *Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.
- *Household* means the family and LHA -approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD50058, Instruction Booklet, p. 65].
- *Immediate family member* is defined in section 16-VII.B.
- *Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other

member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

- *Premises* mean the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.
- *Stalking* is defined in section 16-VII.B.
- *Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

#### **Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

##### LHA Policy

LHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

LHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

#### **Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]**

The lease must provide that a LHA may evict a family when LHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

##### LHA Policy

LHA will terminate the lease when LHA determines that a household member is illegally using a drug or LHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months. LHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

#### **Threat to Other Residents [24 CFR 966.4(l)(5)(ii)(A)]**

The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including LHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises are grounds for termination of tenancy.

##### LHA Policy

LHA will terminate the lease when a covered person engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or by persons residing in the immediate vicinity of the premises.

*Immediate vicinity* means within a three-block radius of the premises.

LHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the criminal activity.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

#### **Alcohol Abuse [24 CFR 966.4(l)(5)(vi)(A)]**

PHAs must establish standards that allow termination of tenancy if LHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

LHA Policy

LHA will terminate the lease if LHA determines that a household member has engaged in abuse or a pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of such alcohol abuse means more than one incident of any such abuse of alcohol during the previous six months.

LHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the abuse of alcohol.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

**Furnishing False or Misleading Information Concerning Illegal Drug Use or Alcohol Abuse or Rehabilitation [24 CFR 966.4(l)(5)(vi)(B)]**

PHAs must establish standards that allow termination of tenancy if LHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

LHA Policy

LHA will terminate the lease if LHA determines that a household member has furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

LHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs or the abuse of alcohol, and any records or other documentation (or lack of records or documentation) supporting claims of rehabilitation of illegal drug users or alcohol abusers.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

**Other Serious or Repeated Violations of Material Terms of the Lease – Mandatory Lease Provisions [24 CFR 966.4(l)(2)(i) and 24 CFR 966.4(f)]**

HUD regulations require certain tenant obligations to be incorporated into the lease. Violations of such regulatory obligations are considered to be serious or repeated violations of the lease and grounds for termination. Incidents of actual or threatened domestic violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking [24 CFR 5.2005(c)(1)].

LHA Policy

LHA will terminate the lease for the following violations of tenant obligations under the lease:

Failure to make payments due under the lease, including nonpayment of rent (see Chapter 8 for details pertaining to lease requirements for payments due);

Repeated late payment of rent or other charges. Four late payments within a 12 month period shall constitute a repeated late payment.

Failure to fulfill the following household obligations:

- Not to assign the lease or to sublease the dwelling unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- Not to provide accommodations for boarders or lodgers
- To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose
- To abide by necessary and reasonable regulations promulgated by LHA for the benefit and well-being of the housing project and the tenants this shall be posted in the project office and incorporated by reference in the lease
- To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety
- To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition

- To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators
- To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project
- To pay reasonable charges (other than for normal wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest
- To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

### **13-III.C. OTHER AUTHORIZED REASONS FOR TERMINATION [24 CFR 966.4(l)(2) and (5)(ii)(B)]**

HUD authorizes PHAs to terminate the lease for reasons other than those described in the previous sections. These reasons are referred to as "other good cause."

#### **Other Good Cause [24 CFR 966.4(l)(2)(ii)(B) and (C)]**

HUD regulations state that LHA may terminate tenancy for other good cause. The regulations provide a few examples of other good cause, but do not limit LHA to only those examples. The Violence against Women Act of 2005 explicitly prohibits PHAs from considering incidents of actual or threatened domestic violence, dating violence, or stalking as "other good cause" for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1)]. [LHA Policy](#)

LHA will terminate the lease for the following reasons:

- *Fugitive Felon or Parole Violator.* If a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under federal or state law.
- *Persons subject to sex offender registration requirement.* If any member of the household has, during their current public housing tenancy, become subject to a registration requirement under a state sex offender registration program.
- Discovery after admission of facts that made the tenant ineligible
- Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income
- Failure to furnish such information and certifications regarding family composition and income as may be necessary for LHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size
- Failure to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by LHA that such a dwelling unit is available
- Failure to permit access to the unit by LHA after proper advance notification for the purpose of performing routine inspections and maintenance, for making improvements or repairs, or to show the dwelling unit for re-leasing, or without advance notice if there is reasonable cause to believe that an emergency exists
- Failure to promptly inform LHA of the birth, adoption or court-awarded custody of a child. In such a case, promptly means within 7 days of the event.
- Failure to abide by the provisions of LHA pet policy
- If the family has breached the terms of a repayment agreement entered into with LHA
- If a family member has violated federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.
- If a household member has engaged in or threatened violent or abusive behavior toward PHA personnel.

- *Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
- *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate the lease, LHA will consider alternatives as described in Section 13-III.D and other factors described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, LHA may, on a case-by case basis, choose not to terminate the lease.

***Family Absence from Unit [24 CFR 982.551(i)]***

It is reasonable that the family may be absent from the public housing unit for brief periods. However, LHA needs a policy on how long the family may be absent from the unit. Absence in this context means that no member of the family is residing in the unit.

LHA Policy

The family must supply any information or certification requested by LHA to verify that the family is living in the unit, or relating to family absence from the unit, including any PHA-requested information or certification on the purposes of family absences. The family must cooperate with LHA for this purpose.

The family must promptly notify LHA when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 7 calendar days. In such a case promptly means within the first day of the start of the extended absence.

Prior written approval from LHA must be obtained for any anticipated absence in excess of 30 days

If a family is absent from the public housing unit for more than 30 consecutive days, and the family has not received written approval from LHA for such absence and the family does not adequately verify that they are living in the unit, LHA will terminate the lease for other good cause.

*Abandonment.* If the family appears to have vacated the unit without giving proper notice, LHA will follow state and local landlord-tenant law pertaining to abandonment before taking possession of the unit. If necessary, LHA will secure the unit immediately to prevent vandalism and other criminal activity.

**Over-Income Families [24 CFR 960.261; and FR Notice 7/26/18 11/26/04, p. 68786]**

~~Subject to certain restrictions, HUD authorizes PHAs to evict or terminate the tenancies of families because they are over income. Unless required to do so by local law, LHA may not evict or terminate the tenancy of a family solely because the family is over income if: (1) the family has a valid contract of participation in the Family Self-Sufficiency (FSS) program; or (2) the family is currently receiving the earned income disallowance. This rule does not require PHAs to evict over-income residents, but rather gives PHAs the discretion to do so thereby making units available for applicants who are income eligible.~~

~~The Housing Opportunity~~

~~Through Modernization Act (HOTMA) of 2016 placed an income limitation on public housing tenancies. The over-income requirement states that after a family’s income has exceeded 120 percent of area median income (AMI) (or a different limitation established by the secretary) for two consecutive years, the PHA must either terminate the family’s tenancy within six months of the determination, or charge the family a monthly rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit, including amounts from the operating and capital funds, as determined by regulations.~~

~~PHAs also have discretion, under 24 CFR 960.261, to adopt policies allowing termination of tenancy for families whose income exceeds the limit for program eligibility. Such policies would exempt families participating in the Family Self-Sufficiency (FSS) program or currently receiving the earned income disallowance.~~

LHA Policy

~~At annual or interim reexamination, if a family’s income exceeds the applicable overincome limit, the PHA will document the family file and begin tracking the family’s over-income status.~~

~~If one year after the applicable annual or interim reexamination the family’s income continues to exceed the applicable over-income limit, the PHA will notify the family in~~

writing that their income has exceeded the over-income limit for one year, and that if the family continues to be over-income for 12 consecutive months, the family will be subject to the PHA's over-income policies.

If two years after the applicable annual or interim reexamination the family's income continues to exceed the applicable over-income limit, the PHA will charge the family a rent that is the higher of the applicable fair market rent (FMR) or the amount of monthly subsidy for the unit. The PHA will notify the family in writing of their new rent amount. The new rent amount will be effective 30 days after the PHA's written notice to the family.

If, at any time, an over-income family experiences a decrease in income, the family may request an interim redetermination of rent in accordance with PHA policy. If, as a result, the previously over-income family is now below the over-income limit, the family is no longer subject to over-income provisions as of the effective date of the recertification.

The PHA will notify the family in writing that over-income policies no longer apply to them. If the family's income later exceeds the over-income limit again, the family is entitled to a new two-year grace period.

The PHA will begin tracking over-income families once these policies have been adopted, but no later than March 24, 2019.

LHA will not evict or terminate the tenancies of families whose income exceeds the income limit for program eligibility as described at 24 CFR 960.261 ~~solely because they are over income.~~

### **13-III.D. ALTERNATIVES TO TERMINATION OF TENANCY**

#### **Exclusion of Culpable Household Member [24 CFR 966.4(l)(5)(vii)(C)]**

As an alternative to termination of the lease for criminal activity or alcohol abuse HUD provides that LHA may consider exclusion of the culpable household member. Such an alternative can be used, by LHA Policy, for any other reason where such a solution appears viable.

#### LHA Policy

LHA will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination. As a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon PHA request.

#### **Repayment of Family Debts**

#### LHA Policy

If a family owes amounts to LHA, as a condition of continued occupancy, LHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from LHA of the amount owed. See Chapter 16 for policies on repayment agreements.



### **13-III.E. CRITERIA FOR DECIDING TO TERMINATE TENANCY**

A PHA that has grounds to terminate a tenancy is not required to do so, except as explained in Part II of this chapter, and may consider all of the circumstances relevant to a particular case before making a decision.

#### **Evidence [24 CFR 982.553(c)]**

For criminal activity, HUD permits LHA to terminate the lease if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted, and without satisfying the standard of proof used for a criminal conviction.

#### LHA Policy

LHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

#### **Consideration of Circumstances [24 CFR 966.4(l)(5)(vii)(B)]**

Although it is required that certain lease provisions exist for criminal activity and alcohol abuse, HUD provides that LHA may consider all circumstances relevant to a particular case in order to determine whether or not to terminate the lease. Such relevant circumstances can also be considered when terminating the lease for any other reason.

#### LHA Policy

LHA will consider the following factors before deciding whether to terminate the lease for any of the HUD required lease provisions or for any other reasons:

- The seriousness of the offending action, especially with respect to how it would affect other residents
- The extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or (as discussed further in section 13-III.F) a victim of domestic violence, dating violence, or stalking
- The effects that the eviction will have on other family members who were not involved in the action or failure to act
- The effect on the community of the termination, or of LHA's failure to terminate the tenancy
- The effect of LHA's decision on the integrity of the public housing program
- The demand for housing by eligible families who will adhere to lease responsibilities
- The extent to which the leaseholder has shown personal responsibility and whether they have taken all reasonable steps to prevent or mitigate the offending action
- The length of time since the violation occurred, the family's recent history, and the likelihood of favorable conduct in the future
- In the case of program abuse, the dollar amount of the underpaid rent and whether or not a false certification was signed by the family

#### **Consideration of Rehabilitation [24 CFR 966.4(l)(5)(vii)(D)]**

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

#### LHA Policy

In determining whether to terminate the lease for illegal drug use or a pattern of illegal drug use, or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, LHA will consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

For this purpose LHA will require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

#### **Reasonable Accommodation [24 CFR 966.7]**

If the family includes a person with disabilities, LHA's decision to terminate the family's lease is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### LHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of lease, LHA will determine whether the behavior is related to the disability. If so, upon the family's request, LHA will determine whether alternative measures are appropriate as a reasonable accommodation. LHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed lease termination. See Chapter 2 for a discussion of reasonable accommodation.

**Nondiscrimination Limitation [24 CFR 966.4(l)(5)(vii)(F)]**

LHA's eviction actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105.

**13-III.F. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

This section addresses the protections against termination of tenancy that the Violence against Women Act of 2013 (VAWA) provides for public housing residents who are victims of domestic violence, dating violence, sexual assault, or stalking. For general VAWA requirements and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-VII of this ACOP, where definitions of key VAWA terms are also located.

**VAWA Protections against Termination [24 CFR 5.2005(c)]**

VAWA provides that no person may deny assistance, tenancy, or occupancy rights to public housing to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or affiliated individual is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking [FR Notice 8/6/13].

VAWA further provides that incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as serious or repeated violations of the lease by the victim or threatened victim of such violence or as good cause for terminating the tenancy or occupancy rights of the victim of such violence [24 CFR 5.2005(c)(1), FR Notice 8/6/13].

**Limits on VAWA Protections [24 CFR 5.2005(d) and (e), FR Notice 8/6/13]**

While VAWA prohibits a PHA from using domestic violence, dating violence, sexual assault, or stalking as the cause for a termination or eviction action against a public housing tenant who is the victim of the abuse, the protections it provides are not absolute. Specifically:

- VAWA does not limit a PHA's otherwise available authority to terminate assistance to or evict a victim for lease violations not premised on an act of domestic violence, dating violence, sexual assault, or stalking providing that the PHA does not subject the victim to a more demanding standard than the standard to which it holds other tenants.
- VAWA does not limit a PHA's authority to terminate the tenancy of any public housing tenant if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated.

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm

- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim’s assistance “only when there are no other actions that could be taken to reduce or eliminate the threat, including but not limited to transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat” [24 CFR 5.2005(d)(3)]. Additionally, HUD regulations state that restrictions “predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents” [24 CFR 5.2005(d)(3)].

PHA Policy

In determining whether a public housing tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the PHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location, transferring the victim to another unit, or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the tenant wishes to contest the PHA’s determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the grievance hearing or in a court proceeding.

**Documentation of Abuse [24 CFR 5.2007]**

PHA Policy

When an individual facing termination of tenancy for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, the PHA will request in writing that the individual provide documentation supporting the claim in accordance with the policies in section 16-VII.D of this ACOP.

The PHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the PHA will document the waiver in the individual’s file.

## Terminating or Evicting a Perpetrator of Domestic Violence

Although VAWA provides protection from termination for victims of domestic violence, it does not provide such protection for perpetrators. In fact, VAWA gives the PHA the explicit authority to bifurcate a lease, or remove a household member from a lease, “in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing” [FR Notice 8/6/13]. Moreover, HUD regulations impose on the PHA the obligation to consider lease bifurcation in any circumstances involving domestic violence, dating violence, or stalking [24 CFR 966.4(e)(9)].

Specific lease language affirming the PHA’s authority to bifurcate a lease is not necessary, and the authority supersedes any local, state, or federal law to the contrary. However, if the PHA chooses to exercise its authority to bifurcate a lease, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law for eviction, lease termination, or termination of assistance. This means that the PHA must follow the same rules when terminating or evicting an individual as it would when terminating or evicting an entire family [FR Notice 3/16/07].

### PHA Policy

The PHA will bifurcate a family’s lease and terminate the tenancy of a family member if the PHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the tenancy or program assistance of the remaining, nonculpable family members.

In making its decision, the PHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-53825382) or other documentation of abuse submitted to the PHA by the victim in accordance with this section and section 16-VII.D. The PHA will also consider the factors in section 13.III.E. Upon such consideration, the PHA may, on a case-by-case basis, choose not to bifurcate the lease and terminate the tenancy of the culpable family member.

If the PHA does bifurcate the lease and terminate the tenancy of the culpable family member, it will do so in accordance with the lease, applicable law, and the policies in this ACOP. If the person removed from the lease was the only tenant eligible to receive assistance, the PHA must provide any remaining tenant a chance to establish eligibility for the unit. If the remaining tenant cannot do so, the PHA must provide the tenant reasonable time to find new housing or to establish eligibility for another housing program covered by VAWA 2013.

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## **PART IV: NOTIFICATION REQUIREMENTS, EVICTION PROCEDURES AND RECORD KEEPING**

### **13-IV.A. OVERVIEW**

HUD regulations specify the requirements for the notice that must be provided prior to lease termination. This part discusses those requirements and the specific requirements that precede and follow termination for certain criminal activities which are addressed in the regulations. This part also discusses specific requirements pertaining to the actual eviction of families and record keeping.

### **13-IV.B. CONDUCTING CRIMINAL RECORDS CHECKS [24 CFR 5.903(e)(ii) and 24 CFR 960.259]**

HUD authorizes PHAs to conduct criminal records checks on public housing residents for lease enforcement and eviction. LHA Policy determines when LHA will conduct such checks.

LHA will conduct criminal records checks when it has come to the attention of LHA, either from local law enforcement or by other means, which an individual has engaged in the destruction of property, engaged in violent activity against another person, or has interfered with the right to peaceful enjoyment of the premises of other residents. Such checks will also include sex offender registration information. In order to obtain such information, all adult household members must sign consent forms for release of criminal conviction and sex offender registration records on an annual basis. LHA may not pass along to the tenant the costs of a criminal records check.

### **13-IV.C. DISCLOSURE OF CRIMINAL RECORDS TO FAMILY [24 CFR 5.903(f), 24 CFR 5.905(d) and 24 CFR 966.4(l) (5) (iv)]**

In conducting criminal records checks, if LHA uses the authority of 24 CFR 5.903 and 5.905 to obtain such information, certain protections must be afforded the tenant before any adverse action is taken. In such cases if LHA obtains criminal records information from a state or local agency showing that a household member has been convicted of a crime, or is subject to a sex offender registration requirement, relevant to lease enforcement or eviction, LHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

#### LHA Policy

In all cases where criminal record or sex offender registration information would result in lease enforcement or eviction, LHA will notify the household in writing of the proposed adverse action and will provide the subject of the record and the tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information before an eviction or lease enforcement action is taken.

The family will be given 10 business days from the date of LHA notice, to dispute the accuracy and relevance of the information. If the family does not contact LHA to dispute the information within that 10 business day period, LHA will proceed with the termination action.

Should the tenant not exercise their right to dispute prior to any adverse action, the tenant still has the right to dispute in the grievance hearing or court trial.

### **13-IV.D. LEASE TERMINATION NOTICE [24 CFR 966.4(l) (3)]**

#### **Form, Delivery, and Content of the Notice**

Notices of lease termination must be in writing. The notice must state the specific grounds for termination, the date the termination will take place, the resident's right to reply to the termination notice, and their right to examine PHA documents directly relevant to the termination or eviction. If LHA does not make the documents available for examination upon request by the tenant, LHA may not proceed with the eviction [24 CFR 966.4(m)].

When LHA is required to offer the resident an opportunity for a grievance hearing, the notice must also inform the resident of their right to request a hearing in accordance with LHA's grievance procedure. In these cases, the tenancy shall not terminate until the time for the tenant to request a grievance hearing has expired and the grievance procedure has been completed.

When LHA is not required to offer the resident an opportunity for a grievance hearing because HUD has made a due process determination and the lease termination is for criminal activity that threatens health, safety or right to peaceful enjoyment or for drug-related criminal activity, the notice of lease termination must state that the tenant is not entitled to a grievance hearing on the termination. It must specify the judicial eviction procedure to be used by LHA for eviction of the tenant, and state that HUD has determined that the eviction procedure provides the opportunity for a hearing in court that contains the basic elements of due process as defined in HUD regulations. The notice must also state whether the eviction is for a criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other residents or employees of LHA, or for a drug-related criminal activity on or off the premises.

#### LHA Policy

LHA will deliver notices of lease termination to the tenant by first-class mail...

All notices of lease termination will include information about the protection against termination provided by the Violence against Women Act of 2005 (VAWA) for victims of domestic violence, dating violence, or stalking (see section 16-VII.C). Any family member who claims that the cause for termination involves (a) criminal acts of physical violence

against family members or others or (b) incidents of domestic violence, dating violence, or stalking of which a family member is the victim will be given the opportunity to provide documentation in accordance with the policies in sections 13-III.F and 16-VII.D.

**Timing of the Notice [24 CFR 966.4(l)(3)(i)]**

LHA must give written notice of lease termination of:

- 14 calendar days plus 3 days for mailing in the case of failure to pay rent
- A reasonable period of time considering the seriousness of the situation (but not to exceed 30 calendar days)
- If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened
- If any member of the household has engaged in any drug-related criminal activity or violent criminal activity will be 7 days plus 3 days for mailing
- If any member of the household has been convicted of a felony will be 7 days plus 3 days mailing
- 30 calendar days plus 3 days for mailing in any other case, except that if a state or local law allows a shorter notice period, such shorter period shall apply

LHA Policy

LHA will give written notice of 14 calendar days plus 3 days for mailing for nonpayment of rent. For all other lease terminations LHA will give 30 days' plus 3 days for mailing, written notice or, if state or local law allows less than 30 days, such shorter notice will be given. The State of Florida allows for a 3 days' notice of termination of the lease agreement.

The Notice to vacate that may be required under state or local law may be combined with or run concurrently with the notice of lease termination.

**Notice of Nonrenewal Due to Community Service Noncompliance [24 CFR 966.4(l)(2)(ii)(D), 24 CFR 960.603(b) and 24 CFR 960.607(b)]**

When LHA finds that a family is in noncompliance with the community service requirement, the tenant and any other noncompliant resident must be notified in writing of this determination. Notices of noncompliance will be issued in accordance with the requirements and policies in Section 11-I.E.

LHA Policy

If after receiving a notice of initial noncompliance the family does not request a grievance hearing, or does not take either corrective action required by the notice within the required timeframe, a termination notice will be issued in accordance with the policies above.

If a family agreed to cure initial noncompliance by signing an agreement, and is still in noncompliance after being provided the 12-month opportunity to cure, the family will be issued a notice of continued noncompliance. The notice of continued noncompliance will be sent in accordance with the policies in Section 11-I.E. and will also serve as the notice of termination of tenancy.

**Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

In cases where termination of tenancy is based on citizenship status, HUD requires the notice of termination to contain additional information. In addition to advising the family of the reasons their assistance is being terminated, the notice must also advise the family of any of the following that apply: the family's eligibility for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, the family's right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and the family's right to request an informal hearing with LHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Please see Chapter 14 for LHA's informal hearing procedures.

**13-IV.E. EVICTION [24 CFR 966.4(l) (4) and 966.4(m)]**

Eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. LHA may only evict the tenant from the unit by instituting a court action, unless the law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties.

LHA Policy

When a family does not vacate the unit after receipt of a termination notice, by the deadline given in the notice, LHA will follow state and local landlord-tenant law in filing an eviction action with the local court that has jurisdiction in such cases. If the eviction action is finalized in court and the family remains in occupancy beyond the deadline to vacate given by the court, LHA will seek the assistance of the court to remove the family from the premises as per state and local law. LHA may not proceed with an eviction action if LHA has not made available the documents to be used in the case against the family, and has not afforded the family the opportunity to examine and copy such documents in accordance with the provisions of 24 CFR 966.4(1)(3) and (m).

#### **13-IV.F. NOTIFICATION TO POST OFFICE [24CFR 966.4(l) (5) (iii)(B)]**

When LHA evicts an individual or family for criminal activity, including drug-related criminal activity, LHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

#### **13-IV.G. RECORD KEEPING**

For more information concerning general record keeping, see Chapter 16.

##### LHA Policy

A written record of every termination and/or eviction will be maintained by LHA at the development where the family was residing, and will contain the following information:

- Name of resident, number and identification of unit occupied
- Date of the notice of lease termination and any other notices required by state or local law; these notices may be on the same form and will run concurrently
- Specific reason(s) for the notices, citing the lease section or provision that was violated, and other facts pertinent to the issuing of the notices described in detail (other than any criminal history reports obtained solely through the authorization provided in 24 CFR 5.903 and 5.905)
- Date and method of notifying the resident Summaries of any conferences held with the resident including dates, names of conference participants, and conclusions

### **Chapter 14 GRIEVANCES AND APPEALS**

#### **INTRODUCTION**

This chapter discusses grievances and appeals pertaining to LHA actions or failures to act that adversely affect public housing applicants or residents. The policies are discussed in the following three parts:

Part I: Informal Hearings for Public Housing Applicants. This part outlines the requirements and procedures for informal hearings for public housing applicants.

Part II: Informal Hearings with Regard to Noncitizens. This part discusses informal hearings regarding citizenship status and where they differ from the requirements for general applicant and tenant grievances.

Part III: Grievance Procedures for Public Housing Residents. This part outlines the requirements and procedures for handling grievances for public housing residents.

Note that this chapter is not LHA's grievance procedure. The grievance procedure is a document separate from the ACOP. This chapter of the ACOP provides the policies that drive the grievance procedure.

### **PART I: INFORMAL HEARINGS FOR PUBLIC HOUSING APPLICANTS**

#### **14-I.A. OVERVIEW**

When LHA makes a decision that has a negative impact on an applicant family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal hearing. HUD regulations do not provide a structure for or requirements regarding informal hearings for applicants (except with regard to citizenship status, to be covered in Part II). This part discusses LHA policies necessary to respond to applicant appeals through the informal hearing process.

#### **14-I.B. INFORMAL HEARING PROCESS [24 CFR 960.208(a) and PH Occ GB, p. 58]**

Informal hearings are provided for public housing applicants. An applicant is someone who has applied for admission to the public housing program, but is not yet a tenant in the program. Informal hearings are intended to provide a means for

an applicant to dispute a determination of ineligibility for admission to a project [24 CFR 960.208(a)]. Applicants to public housing are not entitled to the same hearing process afforded tenants in LHA grievance procedure [24 CFR 966.53(a) and PH Occ GB, p. 58].

Informal hearings provide the applicant a means to hear the details of the reasons for rejection, and an opportunity to present evidence to the contrary if available, and to claim mitigating circumstances if possible.

#### **Use of Informal Hearing Process**

While LHA must offer the opportunity of an informal hearing to applicants who have been determined as ineligible for admission, LHA could make the informal hearing process available to applicants who wish to dispute other LHA actions that adversely affect them.

#### LHA Policy

LHA will only offer informal hearings to applicants for the purpose of disputing denials of admission.

#### **Notice of Denial [24 CFR 960.208(a)]**

LHA must give an applicant prompt notice of a decision denying eligibility for admission. The notice must contain a brief statement of the reasons for LHA decision, and must also state that the applicant may request an informal hearing to dispute the decision. The notice must describe how to obtain the informal hearing.

Prior to notification of denial based on information obtained from criminal or sex offender registration records, the family, in some cases, must be given the opportunity to dispute the information in those records which would be the basis of the denial. See Section 3-III.G for details concerning this requirement.

#### **Scheduling an Informal Hearing**

#### LHA Policy

A request for an informal hearing must be made in writing and delivered to LHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of LHA's notification of denial of admission. LHA will schedule and send written notice of the informal hearing within 10 business days of the family's request.

#### **Conducting an Informal Hearing [PH Occ. GB, p. 58]**

#### LHA Policy

The informal hearing will be conducted by a person other than the one who made the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of LHA.

The LHA staff person conducting the informal hearing is responsible for making the final decision as to whether admission should be granted or denied.

#### **Informal Hearing Decision [PH Occ. GB, p. 58]**

#### LHA Policy

LHA will notify the applicant of LHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, LHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice
- The validity of grounds for denial of admission. If the grounds for denial are not specified in the regulations or in LHA policy, then the decision to deny assistance will be overturned. See Chapter 3 for a detailed discussion of the grounds for applicant denial.
- The validity of the evidence. LHA will evaluate whether the facts presented prove the grounds for denial of admission. If the facts prove that there are grounds for denial, and the denial is required by HUD, LHA will uphold the decision to deny admission.
- If the facts prove the grounds for denial, and the denial is discretionary, LHA will consider the recommendation of the person conducting the informal hearing in making the final decision whether to deny admission.
- LHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed by first class mail, within 10 business days of the informal hearing, to the applicant and his or her representative, if any.

If the informal hearing decision overturns the denial, processing for admission will resume.

If the family fails to appear for their informal hearing, the denial of admission will stand and the family will be so notified.

#### **Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and LHA must consider such accommodations. LHA must also consider reasonable accommodation requests pertaining to the



reasons for denial if related to the person's disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

## **PART II: INFORMAL HEARINGS WITH REGARD TO NONCITIZENS**

### **14-II.A. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. These special hearings are referred to in the regulations as informal hearings, but the requirements for such hearings are different from the informal hearings used to deny applicants for reasons other than immigration status.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while LHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or LHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 13, the notice of denial or termination of assistance for noncitizens must advise the family of any of the following that apply:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a tenant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with LHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.

For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

#### **United States Citizenship and Immigration Services Appeal Process [24 CFR 5.514(e)]**

When LHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, LHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide LHA with a copy of the written request for appeal and proof of mailing. LHA Policy

LHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide LHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to LHA, of its decision. When the USCIS notifies LHA of the decision, LHA must notify the family of its right to request an informal hearing.

#### LHA Policy

LHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

#### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, an applicant family may request that LHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of LHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

LHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of LHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

### **LHA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of LHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by LHA, and to confront and cross-examine all witnesses on whose testimony or information LHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or LHA, as may be agreed upon by the two parties. If the family does not arrange for their own interpreter, LHA is still obligated to provide oral translation services in accordance with its LEP Plan.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. LHA may, but is not required to provide a transcript of the hearing.

### **LHA Policy**

LHA will not provide a transcript of an audio taped informal hearing.

### ***Hearing Decision***

LHA must provide the family with a written notice of the final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The notice must state the basis for the decision.

### ***Retention of Documents [24 CFR 5.514(h)]***

LHA must retain for a minimum of 5 years the following documents that may have been submitted to LHA by the family, or provided to LHA as part of the USCIS appeal or LHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

### ***Informal Hearing Procedures for Residents [24 CFR 5.514(f)]***

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, a resident family may request that LHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of LHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for resident families whose tenancy is being terminated based on immigration status is the same as for any grievance under the grievance procedures for resident families found in Part III below.

## **PART III: GRIEVANCE PROCEDURES FOR PUBLIC HOUSING RESIDENTS**

### **14-III.A. REQUIREMENTS [24 CFR 966.52]**

PHAs must have a grievance procedure in place through which residents of public housing are provided an opportunity to grieve any LHA action or failure to act involving the lease or LHA policies which adversely affect their rights, duties, welfare, or status.

LHA grievance procedure must be included in, or incorporated by reference in, the lease.

#### LHA Policy

LHA grievance procedure will be incorporated by reference in the tenant lease.

LHA must provide at least 30 days' notice to tenants and resident organizations setting forth proposed changes in LHA grievance procedure, and providing an opportunity to present written comments. Comments submitted must be considered by LHA before adoption of any grievance procedure changes by the LHA.

#### LHA Policy

Residents and resident organizations will have 30 calendar days from the date they are notified by LHA of any proposed changes in LHA grievance procedure, to submit written comments to LHA.

LHA must furnish a copy of the grievance procedure to each tenant and to resident organizations.

### **14-III.B. DEFINITIONS [24 CFR 966.53; 24 CFR 966.51(a) (2) (i)]**

There are several terms used by HUD with regard to public housing grievance procedures, which take on specific meanings different from their common usage. These terms are as follows:

- **Grievance** – any dispute which a tenant may have with respect to LHA action or failure to act in accordance with the individual tenant's lease or LHA regulations which adversely affect the individual tenant's rights, duties, welfare or status
- **Complainant** – any tenant whose grievance is presented to LHA or at the project management office
- **Due Process Determination** – a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process before eviction from the dwelling unit
- **Elements of Due Process** – an eviction action or a termination of tenancy in a state or local court in which the following procedural safeguards are required: – Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction – Right of the tenant to be represented by counsel – Opportunity for the tenant to refute the evidence presented by LHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have – A decision on the merits
- **Hearing Officer/Panel** – a person/panel selected in accordance with HUD regulations to hear grievances and render a decision with respect thereto
- **Tenant** – the adult person (or persons) (other than a live-in aide) – Who resides in the unit, and who executed the lease with LHA as lessee of the dwelling unit, or, if no such person now resides in the unit, – Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit
- **Resident Organization** – includes a resident management corporation

### **14-III.C. APPLICABILITY [24 CFR 966.51]**

Potential grievances could address most aspects of a LHA's operation. However, there are some situations for which the grievance procedure is not applicable.

The grievance procedure is applicable only to individual tenant issues relating to LHA. It is not applicable to disputes between tenants not involving the LHA. Class grievances are not subject to the grievance procedure and the grievance procedure is not to be used as a forum for initiating or negotiating policy changes of LHA.

If HUD has issued a due process determination, LHA may exclude from LHA grievance procedure any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of LHA;
- Any violent or drug-related criminal activity on or off such premises; **or**
- Any criminal activity that resulted in felony conviction of a household member

In states without due process determinations, PHAs must grant opportunity for grievance hearings for all lease terminations, regardless of cause, but may use expedited grievance procedures, as described in Section 14-III.E. below, to deal with the first two of the above three categories of lease terminations.

If HUD has issued a due process determination, LHA may evict through the state/local judicial eviction procedures. In this case, LHA is not required to provide the opportunity for a hearing under LHA's grievance procedure as described above.

#### LHA Policy

LHA is located in a due process state; therefore LHA excludes the following from the LHA grievance process. The following exclusions can only be seen by a court of justice.

- Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of LHA
- Any violent or drug-related criminal activity on or off such premises
- Any criminal activity that resulted in felony conviction of a household member

See Chapter 13 for related policies on the content of termination notices.

### **14-III.D. INFORMAL SETTLEMENT OF GRIEVANCE [24 CFR 966.54]**

HUD regulations state that any grievance must be personally presented, either orally or in writing, to LHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing.

#### LHA Policy

LHA will accept requests for an informal settlement of a grievance either orally or in writing, to LHA office within 10 business days of the grievable event. Within 10 business days of receipt of the request LHA will arrange a meeting with the tenant at a mutually agreeable time and confirm such meeting in writing to the tenant.

If a tenant fails to attend the scheduled meeting without prior notice, LHA will reschedule the appointment only if the tenant can show good cause for failing to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family.

HUD regulations require that a summary of such discussion will be prepared within a reasonable time and one copy will be given to the tenant and one retained in LHA's tenant file.

The summary must specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefore, and will specify the procedures by which a hearing may be obtained if the complainant is not satisfied.

#### LHA Policy

LHA will prepare a summary of the informal settlement within 5 business days; one copy to be given to the tenant and one copy to be retained in the LHA's tenant file.

### **14-III.E. PROCEDURES TO OBTAIN A HEARING [24 CFR 966.55]**

#### **Requests for Hearing and Failure to Request [24 CFR 966.55(a), (c), and (d)]**

All grievances must be presented in accordance with the informal procedures prescribed above as a condition prior to a grievance hearing. However, if the complainant can show good cause for failure to proceed with the informal settlement process to the hearing officer/panel, the hearing officer/panel may waive this provision [24 CFR 966.55(d)].

The complainant must submit the request in writing for a grievance hearing within a reasonable time after receipt of the summary of informal discussion [24 CFR 966.55(a)]. The request must specify the reasons for the grievance and the action or relief sought.

#### LHA Policy

The resident must submit a written request for a grievance hearing to LHA within 5 business days of the tenant's receipt of the summary of the informal settlement.

If the complainant does not request a hearing, LHA's disposition of the grievance under the informal settlement process will become final. However, failure to request a hearing does not constitute a waiver by the complainant of the right to contest LHA's action in disposing of the complaint in an appropriate judicial proceeding [24 CFR 966.55(c)].

#### **Escrow Deposits [24 CFR 966.55(e)]**

Before a hearing is scheduled in any grievance involving the amount of rent that LHA claims is due, the family must pay an escrow deposit to LHA. When a family is required to make an escrow deposit, the amount is the amount of rent LHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer/panel.

LHA must waive the requirement for an escrow deposit where the family has requested a financial hardship exemption from minimum rent requirements or is grieving the effect of welfare benefits reduction in calculation of family income [24 CFR 5.630(b)(3)].

Unless LHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest LHA's disposition of the grievance in any appropriate judicial proceeding.

#### LHA Policy

LHA will not waive the escrow requirement for grievances involving rent amounts except where required to do so by regulation.

#### **Scheduling of Hearings [24 CFR 966.55(f)]**

If the complainant has complied with all requirements for requesting a hearing as described above, a hearing must be scheduled by the hearing officer/panel promptly for a time and place reasonably convenient to both the complainant and LHA. A written notification specifying the time, place and the procedures governing the hearing must be delivered to the complainant and the appropriate LHA official.

#### LHA Policy

Within 10 business days of receiving a written request for a hearing, the hearing officer will schedule and send written notice of the hearing to both the complainant and LHA. LHA may wish to permit the tenant to request to reschedule a hearing for good cause.

#### LHA Policy

The tenant may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, LHA may request documentation of the "good cause" prior to rescheduling the hearing.

#### **Expedited Grievance Procedure [24 CFR 966.52(a)]**

The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

- Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or employees of the PHA;
- Any drug-related criminal activity on or near such premises; or
- Any criminal activity that resulted in felony conviction of a household member.

In such expedited grievances, the informal settlement of grievances as discussed in 14-III.D is not applicable.

The PHA may adopt special procedures concerning expedited hearings, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

#### **PHA Policy**

**The LHA will not offer expedited grievance procedures.**

#### **14-III.F. SELECTION OF HEARING OFFICER/PANEL [24 CFR 966.55(b)]**

The grievance hearing must be conducted by an impartial person or persons appointed by LHA, other than the person who made or approved LHA action under review, or a subordinate of such person.

#### LHA Policy

LHA grievance hearings will be conducted by a single hearing officer and not a panel. LHA has designated hearing officers.

LHA must determine the methodology for appointment of the hearing officer and it must be stated in the grievance \_\_\_\_\_

procedure.

LHA Policy

LHA will appoint a person who has been selected in the manner required under the grievance procedure. Efforts will be made to assure that the person selected is not a friend, nor enemy; of the complainant and that they do not have a personal stake in the matter under dispute or will otherwise have an appearance of a lack of impartiality.

LHA must consult with resident organizations before a person is appointed as a hearing officer or hearing panel member. Comments from the resident organizations must be considered before making the appointment.

**14-III.G. PROCEDURES GOVERNING THE HEARING [24 CFR 966.56] Rights of Complainant [24 CFR 966.56(b)]**

The complainant will be afforded a fair hearing. This includes: The opportunity to examine before the grievance hearing any LHA documents, including records and regulations that are directly relevant to the hearing. The tenant must be allowed to copy any such document at the tenant's expense. If LHA does not make the document available for examination upon request by the complainant, LHA may not rely on such document at the grievance hearing.

LHA Policy

The tenant will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of LHA documents no later than 12:00 p.m. on the business day prior to the hearing. The right to be represented by counsel or other person chosen as the tenant's representative and to have such person makes statements on the tenant's behalf. LHA Policy Hearings may be attended by the following applicable persons: An LHA representative(s) and any witnesses for LHA, the tenant and any witnesses for the tenant the tenant's counsel or other representative, any other person approved by LHA as a reasonable accommodation for a person with a disability The right to a private hearing unless the complainant requests a public hearing. The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by LHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information LHA or project management relies. A decision based solely and exclusively upon the facts presented at the hearing.

**Decision without Hearing [24 CFR 966.56(c)]**

The hearing officer/panel may render a decision without proceeding with the hearing if the hearing officer/panel determines that the issue has been previously decided in another proceeding.

**Failure to Appear [24 CFR 966.56(d)]**

If the complainant or LHA fails to appear at a scheduled hearing, the hearing officer/panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his/her right to a hearing. Both the complainant and LHA must be notified of the determination by the hearing officer/panel: Provided, That a determination that the complainant has waived his/her right to a hearing will not constitute a waiver of any right the complainant may have to contest LHA's disposition of the grievance in an appropriate judicial proceeding. There may be times when a complainant does not appear due to unforeseen circumstances which are out of their control and are no fault of their own.

LHA Policy

If the tenant does not appear at the scheduled time of the hearing, the hearing officer will wait up to 30 minutes. If the tenant appears within 30 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 30 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact LHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The hearing officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

"Good cause" is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

**General Procedures [24 CFR 966.56(e), (f), and (g)]**

At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter LHA must sustain the burden of justifying LHA action or failure to act against which the complaint is directed [24 CFR 966.56(e)]. The hearing must be conducted informally by the hearing officer/panel. LHA and the tenant must be given the opportunity to present oral or documentary evidence pertinent to the facts and issues raised by the complaint and question any witnesses. In general, all evidence is admissible and may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings [24 CFR 966.56(f)].

LHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

**Oral evidence:** the testimony of witnesses

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to LHA. Writings include all forms of recorded communication or representation, including letters, emails, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If LHA fails to comply with the discovery requirements (providing the tenant with the opportunity to examine LHA documents prior to the grievance hearing), the hearing officer will refuse to admit such evidence.

Other than the failure of LHA to comply with discovery requirements, the hearing officer has the authority to overrule any objections to evidence.

The hearing officer/panel must require LHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer/panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate [24 CFR 966.56(f)].

The complainant or LHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript [24 CFR 966.56(g)].

#### LHA Policy

If the complainant would like LHA to record the proceedings by audiotape, the request must be made to LHA by 12:00 p.m. on the business day prior to the hearing.

LHA will consider that an audio tape recording of the proceedings is a transcript.

#### **Accommodations of Persons with Disabilities [24 CFR 966.56(h)]**

LHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

If the tenant is visually impaired, any notice to the tenant which is required in the grievance process must be in an accessible format.

See Chapter 2 for a thorough discussion of LHA's responsibilities pertaining to reasonable accommodation.

### **14-III.H. DECISION OF THE HEARING OFFICER/PANEL [24 CFR 966.57]**

The hearing officer/panel must issue a written decision, stating the reasons for the decision, within a reasonable time after the hearing. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the decision must be sent to the tenant and the LHA. LHA must retain a copy of the decision in the tenant's folder.

A copy of the decision, with all names and identifying references deleted, must also be maintained on file by LHA and made available for inspection by a prospective complainant, his/her representative, or the hearing officer/panel [24 CFR 966.57(a)].

#### LHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the LHA's decision are factually stated in the notice.

**Discovery:** The hearing officer will determine if the family was given the opportunity to examine any relevant documents in accordance with LHA Policy.

**LHA Evidence to Support LHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support LHA's conclusion.

**Validity of Grounds for Termination of Tenancy (when applicable):** The hearing officer will determine if the termination of tenancy is for one of the grounds specified in the HUD regulations and LHA policies. If the grounds for termination are not specified in the regulations or in compliance with LHA policies, then the decision of LHA will be overturned.

The hearing officer will issue a written decision to the family and LHA no later than 10 business days after the hearing. The report will contain the following information:

#### **Hearing information:**

- Name of the complainant
- Date, time and place of the hearing
- Name of the hearing officer



- Name of LHA representative(s)
- Name of family representative (if any)
- Names of witnesses (if any)

**Background:** A brief, impartial statement of the reason for the hearing and the date(s) on which the informal settlement was held, who held it, and a summary of the results of the informal settlement. Also includes the date the complainant requested the grievance hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold LHA's decision.

**Order:** The hearing report will include a statement of whether LHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct LHA to change the decision in accordance with the hearing officer's determination. In the case of termination of tenancy, the hearing officer will instruct LHA to restore the family's status.

### **Procedures for Further Hearing**

#### LHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of LHA will take effect and another hearing will not be granted.

#### **Final Decision [24 CFR 966.57(b)]**

The decision of the hearing officer/panel is binding on LHA which must take the action, or refrain from taking the action cited in the decision unless LHA Board of Commissioners determines within a reasonable time, and notifies the complainant that:

The grievance does not concern LHA action or failure to act in accordance with or involving the complainant's lease on LHA policies which adversely affect the complainant's rights, duties, welfare, or status; or

The decision of the hearing officer/panel is contrary to Federal, state, or local law, HUD regulations or requirements of the annual contributions contract between HUD and LHA

#### LHA Policy

When LHA considers the decision of the hearing officer to be invalid due to the reasons stated above, it will present the matter to LHA Board of Commissioners within 10 business days of the date of the hearing officer's decision. The Board has 30 calendar days to consider the decision. If the Board decides to reverse the hearing officer's decision, it must notify the complainant within 10 business days of this decision.

A decision by the hearing officer/panel, or Board of Commissioners in favor of LHA or which denies the relief requested by the complainant in whole or in part must not constitute a waiver of any rights the complainant may have to a subsequent trial or judicial review in court [24 CFR 966.57(c)].

## **Chapter 15**

### **PROGRAM INTEGRITY**

#### **INTRODUCTION**

The LHA is committed to ensuring that funds made available to the LHA are spent in accordance with HUD requirements.

This chapter covers HUD and LHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents LHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the LHA must and may take when errors or program abuses are found.

## **PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **15-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

Provide applicants and residents with form HUD-52675, “Debts Owed to PHAs and Terminations”

Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

#### LHA Policy

The LHA anticipates that the vast majority of families and LHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the LHA’s program is administered effectively and according to the highest ethical and legal standards, the LHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

LHA will provide each applicant and resident with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The LHA will provide each applicant and resident with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH ~~2010-19~~2017-12 . In addition, LHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The LHA will require mandatory orientation sessions for all prospective residents either prior to or upon execution of the lease. The LHA will discuss program compliance and integrity issues. At the conclusion of all program orientation sessions, the family representative will be required to sign a program briefing certificate to confirm that all rules and pertinent regulations were explained to them.

The LHA will routinely provide resident counseling as part of every reexamination interview in order to clarify any confusion pertaining to program rules and requirements.

LHA staff will be required to review and explain the contents of all HUD-and LHA-required forms prior to requesting family member signatures.

The LHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key LHA forms and form letters that request information from a family member.

The LHA will provide each LHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

### **15-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the LHA will use a variety of activities to detect errors and program abuse.

#### **Quality Control and Analysis of Data**

##### LHA Policy

The LHA will employ a variety of methods to detect errors and program abuse, including:

The LHA routinely will use available sources of up-front income verification, including HUD’s EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The LHA will compare family-reported income and expenditures to detect possible unreported income.

#### **Independent Audits and HUD Monitoring**

Notice PIH 2015-16 requires all PHAs that expend \$750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of LHA activities and notifies the LHA of errors and potential cases of program abuse.

##### LHA Policy

The LHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the LHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### LHA Policy

The LHA will encourage staff, residents, and the public to report possible program abuse.

## **15-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When LHA Will Investigate**

#### LHA Policy

The LHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the LHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The LHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

### **Consent to Release of Information [24 CFR 960.259]**

LHA may investigate possible instances of error or abuse using all available LHA and public records. If necessary, LHA will require applicant/resident families to give consent to the release of additional information.

### **Analysis and Findings**

#### LHA Policy

The LHA will base its evaluation on a preponderance of the evidence collected during its investigation.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the LHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the LHA, and (3) what corrective measures or penalties will be assessed.

### **Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether LHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

#### LHA Policy

In the case of family-caused errors or program abuse, LHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

### **Notice and Appeals**

#### LHA Policy

LHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which LHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through an informal hearing or grievance hearing (see Chapter 14).

## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **15-II.A. UNDER-OR OVERPAYMENT**

An under-or overpayment includes an incorrect tenant rent payment by the family, or an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect rental determination is an overpayment or underpayment, LHA must promptly correct the tenant rent and any utility reimbursement prospectively.

#### LHA Policy

Increases in the tenant rent will be implemented only after the family has received 30 days' notice.

Any decreases in tenant rent will become effective the first of the month following the discovery of the error.

## **Reimbursement**

Whether the family is required to reimburse LHA or LHA is required to reimburse the family depends upon which party is responsible for the incorrect payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **15-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

General administrative requirements for participating in the program are discussed throughout the ACOP. This section deals specifically with errors and program abuse by family members.

An incorrect rent determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows LHA to use incorrect information provided by a third party.

#### **Family Reimbursement to LHA**

##### LHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any amounts of rent underpaid. LHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the amount owed, LHA will terminate the family's lease in accordance with the policies in Chapter 13. **LHA**

#### **Reimbursement to Family**

##### LHA Policy

LHA will not reimburse the family for any overpayment of rent when the overpayment clearly is caused by the family.

#### **Prohibited Actions**

An applicant or resident in the public housing program must not knowingly:

- Make a false statement to LHA [Title 18 U.S.C. Section 1001].
- Provide incomplete or false information to LHA [24 CFR 960.259(a)(4)].
- Commit fraud, or make false statements in connection with an application for assistance or with reexamination of income [24 CFR 966.4(1)(2)(iii)(C)].

##### LHA Policy

Any of the following will be considered evidence of family program abuse:

- Offering bribes or illegal gratuities to LHA Board of Commissioners, employees, contractors, or other LHA representatives
- Offering payments or other incentives to a third party as an inducement for the third party to make false or misleading statements to LHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g., misreporting of income or family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

LHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

#### **Penalties for Program Abuse**

In the case of program abuse caused by a family LHA may, at its discretion, impose any of the following remedies. LHA may require the family to repay any amounts owed to the program (see 15-II.B., Family Reimbursement to LHA). LHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 13 (for residents).

LHA may deny admission or terminate the family's lease following the policies set forth in Chapter 3 and Chapter 13 respectively.

LHA may refer the family for state or federal criminal prosecution as described in section 15-II.D.

### **15-II.C. LHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of LHA staff with respect to normal program administration are discussed throughout the ACOP. This section specifically addresses actions of a LHA staff member that are considered errors or

program abuse related to the public housing program. Additional standards of conduct may be provided in LHA personnel policy.

LHA-caused incorrect rental determinations include (1) failing to correctly apply public housing rules regarding family composition, income, assets, and expenses, and (2) errors in calculation.

### **Repayment to the LHA**

The family is not required to repay an underpayment of rent if the error or program abuse is caused by LHA staff.

### **LHA Reimbursement to Family**

#### LHA Policy

LHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error or staff program abuse.

### **Prohibited Activities**

#### LHA Policy

Any of the following will be considered evidence of program abuse by LHA staff:

- Failing to comply with any public housing program requirements for personal gain
- Failing to comply with any public housing program requirements as a result of a conflict of interest relationship with any applicant or resident
- Seeking or accepting anything of material value from applicants, residents, vendors, contractors, or other persons who provide services or materials to the LHA
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of LHA activities, policies, or practices
- Misappropriating or misusing public housing funds
- Destroying, concealing, removing, or inappropriately using any records related to the public housing program
- Committing any other corrupt or criminal act in connection with any federal housing program

## **15-IL.D. CRIMINAL PROSECUTION**

### LHA Policy

When LHA determines that program abuse by a family or LHA staff member has occurred and the amount of underpaid rent meets or exceeds the threshold for prosecution under local or state law, LHA will refer the matter to the appropriate entity for prosecution. When the amount of underpaid rent meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the public housing program will be referred to the appropriate local, state, or federal entity.

## **15-IL.E. FRAUD AND PROGRAM ABUSE RECOVERIES**

PHAs who enter into a repayment agreement with a family to collect rent owed, initiate litigation against the family to recover rent owed, or begin eviction proceedings against a family may retain 100 percent of program funds that LHA recovers [Notice PIH 2007-27(HA)].

If LHA does none of the above, all amounts that constitute an underpayment of rent must be returned to HUD.

The family must be afforded the opportunity for a hearing through the LHA's grievance process.

## **Chapter 16 PROGRAM ADMINISTRATION**

### **INTRODUCTION**

This chapter discusses administrative policies and practices that are relevant to the activities covered in this ACOP. The policies are discussed in seven parts as described below:

Part I: Setting Utility Allowances. This part describes how utility allowances are established and revised. Also discussed are the requirements to establish surcharges for excess consumption of PHA-furnished utilities.

Part II: Establishing Flat Rents and Public Housing Maximum Rents. This part describes the requirements and policies related to establishing and updating flat rent amounts and public housing maximum rents.

Part III: Repayment of Family Debts. This part contains policies for recovery of monies that have been underpaid by families, and describes the circumstances under which LHA will offer repayment agreements to families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part IV: Public Housing Assessment System (PHAS). This part describes the PHAS indicators, how PHAs are scored under PHAS, and how those scores affect a PHA.

Part V: Record Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies LHA will follow.

Part VI: Reporting and Record Keeping for Children with **Environmental Intervention Elevated** Blood Lead Level. This part describes the PHA's reporting responsibilities related to children with **environmental intervention elevated** blood lead levels that are living in public housing.

Part VII: Violence against Women Act (VAWA): Notification, Documentation, and Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, and stalking; and maintaining the confidentiality of information obtained from victims.

## **PART I: SETTING UTILITY ALLOWANCES [24 CFR 965 Subpart E]**

### **16-I.A. OVERVIEW**

PHAs must establish allowances for PHA-furnished utilities for all check metered utilities and for resident-purchased utilities for all utilities purchased directly by residents from a utility supplier [24 CFR 965.502(a)].

PHAs must also establish surcharges for excess consumption of PHA-furnished utilities [24 CFR 965.506]. LHA must maintain a record that documents the basis on which utility allowances and scheduled surcharges are established and revised, and the record must be made available for inspection by residents [24 CFR 965.502(b)].

### **16-I.B UTILITY ALLOWANCES**

LHA must establish separate allowances for each utility and for each category of dwelling units LHA determines to be reasonably comparable as to factors affecting utility usage [24 CFR 965.503].

The objective of a LHA in establishing utility allowances for each dwelling unit category and unit size is to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment [24 CFR 965.505].

Utilities include gas, electricity, and fuel for heating, water, sewage, and solid waste disposal for a dwelling unit. In addition, if LHA does not furnish a range and refrigerator, the family must be granted a utility allowance for the range and refrigerator they provide [24 CFR 965.505].

Costs for telephone, cable/satellite TV, and internet services are not considered utilities [PH Occ. GB, p. 138].

Utility allowance amounts will vary by the rates in effect, size and type of unit, climatic location and site of the unit, type of construction, energy efficiency of the dwelling unit, and other factors related to the physical condition of the unit.

Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage [PH Occ. GB, p. 138].

Chapter 14 of the *PH Occupancy Guidebook* provides detailed guidance to LHA about establishing utility allowances.

#### **Air-Conditioning**

“If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or check meters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning but cannot be check metered, residents are to be surcharged in accordance with 965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.” [24 CFR 965.505(e)].

#### PHA Policy

LHA has installed air-conditioning in limited locations.

#### **Utility Allowance Revisions [24 CFR 965.507]**

LHA must review at least annually the basis on which utility allowances have been established and must revise the allowances if necessary in order to adhere to the standards for establishing utility allowances that are contained in 24 CFR 965.505.

LHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change, and is required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rate on which the allowance was based.

Adjustments to resident payments as a result of such changes must be retroactive to the first day of the month following the month in which the last rate change taken into account became effective.

#### LHA Policy

Between annual reviews of utility allowances, LHA will only revise its utility allowances due to a rate change, when required to by the regulation.

### **16-I.C. SURCHARGES FOR LHA -FURNISHED UTILITIES [24 CFR 965.506]**

For dwelling units subject to allowances for LHA -furnished utilities where check meters have been installed, LHA must establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis or for stated blocks of excess consumption, and must be based on LHA's average utility rate. The basis for calculating the surcharges must be described in LHA's schedule of allowances. Changes in the amount of surcharges based directly on changes in LHA's average utility rate are not subject to the advance notice requirements discussed under 16-I.D.

For dwelling units served by LHA -furnished utilities where check meters have not been installed, LHA must establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of LHA -furnished equipment. The surcharge schedule must state the resident-owned equipment (or functions of LHA -furnished equipment) for which surcharges will be made and the amounts of such charges. Surcharges must be based on the cost to LHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

#### LHA Policy

LHA [does/**does not**] have LHA -furnished utilities.

### **16-I.D. NOTICE REQUIREMENTS [965.502]**

LHA must give notice to all residents of proposed allowances and scheduled surcharges, and revisions thereof. The notice must be given in the manner provided in the lease and must: Be provided at least 60 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

Describe the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances and schedule of surcharges.

Notify residents of the place where the LHA's documentation on which allowances and surcharges are based is available for inspection.

Provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances, scheduled surcharges, or revisions.

### **16-I.E. REASONABLE ACCOMMODATION [24 CFR 965.508]**

On request from a family that includes a disabled or elderly person, LHA must approve a utility allowance that is higher than the applicable amount for the dwelling unit if a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family [PH Occ. GB, p. 172].

Likewise, residents with disabilities may not be charged for the use of certain resident-supplied appliances if there is a verified need for special equipment because of the disability [PH Occ. GB, p. 172].

See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

## **PART II: ESTABLISHING FLAT RENTS**

### **16-II.A. OVERVIEW**

Flat rents are designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

Flat rents are also used to prorate assistance for a mixed family. A mixed family is one whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigrations status [24 CFR 5.504].

This part discusses how the PHA establishes and updates flat rents. Policies related to the use of flat rents, \_\_\_\_\_

family choice of rent, flat rent hardships, and proration of rent for a mixed family are discussed in Chapter 6.

## **16-II.B. FLAT RENTS [24 CFR 960.253(b) and Notice PIH 2017-23]**

### **Establishing Flat Rents**

Flat rents for public housing units are based on the market rent charged for comparable units in the private unassisted rental market. The flat rent should be equal to the estimated rent for which LHA could promptly lease the public housing unit after preparation for occupancy.

LHA must use a reasonable method to determine flat rents. In determining flat rents, PHAs must consider the following:

- Location
- Quality
- Unit size
- Unit type
- Age of ~~property~~ the unit
- Amenities at the property and in immediate neighborhood
- Housing services provided
- Maintenance provided by LHA
- Utilities provided by LHA and/or landlord for (comparable units in the market study)
  - The PHA must provide a corresponding key explaining the calculations used for determining the valuation for each factor.

PHAs must receive written HUD approval before implementing exception flat rents. PHAs with a previously approved flat rent exception request may submit a written request to extend the approved flat rents for up to two additional years, provided local market conditions remain unchanged.

Detailed information on how to request exception flat rents can be found in Notice PIH 2017-23.

PHAs are now required to apply a utility allowance to flat rents as necessary. Flat rents set at 80 percent of the FMR must be reduced by the amount of the unit's utility allowance, if any.

### **Review of Flat Rents**

No later than 90 days after the effective date of the new annual

FMRs/SAFMRs/unadjusted rent, PHAs must implement new flat rents as necessary based changes to the FMR/SAFMR/unadjusted rent or request an exception.

If the FMR falls from year to year, the PHA may, but is not required to, lower the flat rent to 80 percent of the current FMR/SAFMR/unadjusted rent.

LHA must ensure that flat rents continue to mirror market rent values [24 CFR 960.253(b)].

#### LHA Policy

LHA will review flat rents on an annual basis, and adjust them as necessary to ensure that flat rents continue to mirror market rent values.

#### **Posting of Flat Rents**

##### LHA Policy

LHA will publicly post the schedule of flat rents in a conspicuous manner in the applicable LHA or project office.

#### **Documentation of Flat Rents [24 CFR 960.253(b)(5)]**

LHA must maintain records that document the method used to determine flat rents, and that show how flat rents were determined by LHA in accordance with this method.

### **Changes to Flat Rent Requirements – 2014 Appropriations Act**

#### **1. PURPOSE**

**This notice implements Sections 210 and 243 of Title II of P.L 113-76, the Consolidated Appropriations Act of 2014. Specifically, this guidance clarifies HUD's interpretation of the statutory amendment related to flat rents and the requirement that PHAs comply with the amendments by June 1, 2014.**



**This notice serves as interim guidance. Section 243 requires HUD to commence rulemaking no later than six months after this notice is issued. The policy will be finalized through the rulemaking and public comment procedures. At that time, the Department will be very interested in feedback from PHAs and other stakeholders about how best to implement the policies. HUD is particularly interested in the burden created by the new policies, impact on PHA budgets, and impact on residents.**

## **2. APPLICABILITY, BACKGROUND, AND HUD INTERPRETATION OF NEW STATUTORY REQUIREMENTS**

**This notice applies to PHAs that operate a public housing program. It also applies to families residing in, or applicants to the public housing program.**

**Moving to Work (MTW) PHAs operating a public housing program can exercise flexibility in regards to establishing flat rents, in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA has not exercised flexibility via the Annual MTW Plan, then the policies set forth in this Notice will apply to the MTW PHA.**

Currently, PHAs are required to establish flat rents based on the market rent of comparable units in the private, unassisted rental market. Paragraph (2)(B)(i) of Section 3(a) of the United States Housing Act of 1937 (the Act), as amended by Section 210, establishes new parameters that PHAs must use when determining the flat rent amounts. Specifically, flat rents must now be: set at no less than 80 percent of the applicable Fair Market Rent (FMR); and Section 210 also establishes that PHAs may, but are not required to lower flat rents to 80% of the applicable FMR in years when the FMR decreases from the previous year. This provision applies to the FMRs published for fiscal year 2015 and beyond. If a PHA must increase their flat rents to comply with the statutory changes, the increase shall be considered a significant amendment to the PHA Annual Plan. Please review Section 8 of this Notice which provides a detailed explanation regarding significant amendments for flat rent changes.

PHAs shall comply with the new flat rent requirements by June 1, 2014. The Department will consider PHAs to be in compliance with the new requirements if non-qualified agencies have initiated the process to amend their PHA Annual Plan, and qualified agencies have initiated the public hearing process by no later than June 1, 2014. PHAs should begin applying the new flat rent schedules to households they are recertifying and new applicants by October 31, 2014.

If a new flat rent amount for a unit will increase a family's existing rental payment by more than 35 percent, then the new flat rent amount shall be phased in as necessary to ensure that the family's existing rental payment does not increase by more than 35 percent annually. For more information, see Section 6 of this notice.

### **3. FMRs AND UTILITY PAYMENTS**

Fair Market Rents (FMRs) are gross rent estimates that cover the shelter rent plus the cost of all necessary utilities regardless of who actually pays the utilities. Although the inclusion of utilities in the FMR is an accurate estimate of the cost of renting a unit in a particular area, their inclusion for purposes of setting Public Housing flat rents may lead to families paying more in gross rent if the shelter rent is not adjusted to reflect utility payments. Specifically, families that pay a flat rent for public housing units and that pay their own utilities would pay more in gross rent (i.e., shelter rent plus utilities) than a family in a similarly situated unit where the PHA pays the utilities.

For example, if an agency sets the flat rent for 1-BR units at exactly 80 percent of the FMR, totaling (\$400), a family renting a unit where the PHA pays the utilities would pay \$400, and a family that rents a unit where they are responsible for paying utilities would pay \$400 plus the cost of utilities. In this case, the family paying for utilities directly pays more because they are renting a unit where they are responsible for their own utility payments.

To address this issue when establishing flat rents, PHAs must consider who is responsible for direct utility payments to the utility company, and adjust the flat rent accordingly. Specifically, if an agency is responsible for paying for utilities to the utility company, no adjustment is necessary when setting flat rents. However, if the family is responsible for making direct utility payments to the utility company, the PHA must adjust the flat rent amount downward, using a utility allowance, to account for reasonable utility costs of an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. For flat rents that are set at 80 percent of FMR, PHAs must first determine 80 percent of FMR for each bedroom-size, and then reduce that amount by the utility allowance. For example, if 80 percent of FMR for a 1-BR unit is \$400, then the resulting rent after a reasonable utilities reduction of \$50 per month would be \$350. PHAs should also consider utility payments where flat rents are set above 80 percent of FMR and incorporate such adjustments as necessary.

### **4. FLAT RENT POLICIES – HOW TO COMPLY WITH THE NEW REQUIREMENTS IN THE INITIAL YEAR**

In order to comply with the statutory requirements, PHAs must do the following:

- 1) Compare the current flat rent amount as determined by the PHA to the applicable FMR;
- 2) If the existing flat rent amount is at least 80 percent of the FMR, the PHA is in compliance with the law, and no further steps are necessary;
- 3) If the existing flat rent amount is less than 80 percent of FMR, PHAs must revise their flat rents to no less than 80 percent of FMR, subject to the utilities adjustment in section 3 of this notice;
- 4) If changes to flat rents are necessary, include a description of the changes to the flat rent policies in a significant amendment to the PHA Annual Plan. Section 8 of this notice provides for a streamlined process for completing this requirement;
- 5) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP);
- 6) The PHA must offer the new flat rent and the applicable income-based rent to all new admissions to the program within 90 days of formally adopting the new flat rents, but not later than October 31, 2014; and
- 7) Within 90 days after a PHA has formally adopted the new flat rents, but not later than October 31, 2014, the PHA must begin to offer the new flat rent to families that are currently paying the flat rent amount, at the family's next annual rent option, and permit the family to choose between the flat rent amount and the income-based rent, subject to the requirements of Section 6 of this notice.

## 5. FLAT RENT POLICIES – HOW TO COMPLY ON AN ANNUAL BASIS

In order to comply with the flat rent requirements annually, PHAs must:

- 1) Calculate flat rents using a rent reasonableness methodology,<sup>1</sup> as defined in 24 CFR Part 960.253(b), for determining the flat rent based on the market rent of comparable units in the private, unassisted rental market. Such a reasonable method should consider the location, quality, size, unit type, unit age, and any amenities;
- 2) If the flat rent, as determined by the rent reasonableness study, is at least 80 percent of the FMR, PHAs must set flat rents at the amount determined by the rent reasonableness study;
- 3) If the flat rent, as determined by the rent reasonableness study, is less than 80 percent of the FMR, PHAs must set flat rents at no less than 80 percent of the FMR, subject to the utilities adjustment in section 3 of this notice;
- 4) If the FMR falls from the previous year, PHAs, may, but are not required to lower the flat rent amount to 80 percent of the FMR;
- 5) Include a description of flat rent policies in the PHA annual plan or in documents available for a public hearing as applicable;
- 6) Update the flat rent policies in the Admissions and Continued Occupancy Policies (ACOP) as necessary;
- 7) At all new admissions permit the family to choose between the flat rent amount and the income-based rent;
- 8) For families that are already paying the flat rent amount, PHAs must offer any changes to flat rent amount at the next annual rent option, and permit the family to choose between the flat rent amount and the income-based rent, subject to the requirements of Section 6 of this notice; and
- 9) Upon issuance of new FMRs by HUD, the PHA must:
  - Determine if the current flat rent is at least 80% of the new FMR;
  - Update the flat rent amounts<sup>2</sup> if necessary to meet the 80% requirement within a reasonable time but no later than 90 days of HUD publishing new FMRs;
  - Apply the new flat rents to all new admissions and to existing families at the next annual rent option, subject to Section 6 of this notice.

## 6. FLAT RENT INCREASE PHASE-IN REQUIREMENTS

Section 210 of the FY 14 Appropriations Act requires that if an existing tenant's rental payment would be increased by 35 percent or more as a result of changes to the flat rent

1 The Department recognizes the burden placed on PHAs by the requirement to complete rent reasonableness studies annually, particularly in jurisdictions where market rents are substantially below the applicable FMR. PHAs that determine through their rent reasonableness methodology that their reasonable rents would be less than 60 percent of the applicable FMR may choose to complete a rent reasonableness study once every three years, rather than annually.<sup>2</sup> Updating flat rents based on changes to the FMR by HUD does not constitute a significant amendment to the annual plan. The amount, that the increase must be phased in such that a family would not experience an increase in their rental payment of more than 35 percent in any one year. Although Section 210 permits PHAs to increase flat rents by up to 35 percent annually, PHAs may consider any limitations on annual rent increases pursuant to state and local law. For example, some states have established annual rent increase limits of no more than 10 percent. Further, PHAs have discretion to phase-in rent increases 35 percent or less over a three-year period. For example, for a family that will experience a rent increase of 10 percent due to the new flat rent requirements, a PHA could choose to phase in the total rent increase over three years.

In order to determine how to phase-in increases in rental payments, PHAs must:

- 1) On a case-by-case basis, at the family's next annual rent option, compare the updated flat rent amount applicable to the unit for which a family is currently paying the flat rent to the flat rent that was being paid by the family immediately prior to the annual rent option;
  - a) If the new flat rent amount would not increase a family's rental payment, the family may choose to pay either the updated flat rent amount or the previously calculated income-based rent;
  - b) If the updated flat rent amount would increase a family's rental payment, PHAs must conduct a flat rent impact analysis by multiplying the existing flat rent amount by 35 percent (or a lesser amount pursuant to state/local law) and adding that product to the flat rent amount ( $FR \times 35\% = X + FR$ ). This calculation can be done by simply multiplying the current flat rent amount by 1.35. PHAs must then compare the product of the calculation to the updated flat rent amount; and
- 2) The PHA must offer and the family may choose to pay, either the lower of the flat rents that were compared in the flat rent impact analysis or the previously calculated Income-based rent.

## **16-ILC. PUBLIC HOUSING MAXIMUM RENTS**

### **Establishing Public Housing Maximum Rents**

PHAs are prohibited from making financial assistance available to persons who are not citizens or nationals of the United States, and to those who do not have eligible immigration status [24 CFR 5.500]. Therefore, in order to assist mixed families, PHAs must prorate assistance. Public housing maximum rents are needed in order to calculate the tenant rent for a mixed family.

The public housing maximum rent is based on value of the 95th percentile of the total tenant payment (TTP) for each tenant within the LHA. PHAs may calculate a maximum rent on either a LHA -or project wide basis. A separate maximum rent can be provided for each separate project or projects may be combined into logical groups, if appropriate. HUD recommends that a single project basis be avoided for a project unless at least 50 dwelling units are involved. PHAs may use the "direct comparison" or the "unit distribution" method for establishing the public housing maximum rents for each unit size. Appendix H, of Guidebook 7465.G, Restrictions on Assistance to Noncitizens provides detailed guidance on how to establish public housing maximum rents using the methodologies identified above.

### **Review of Public Housing Maximum Rents**

#### LHA Policy

LHA will recalculate the public housing maximum rents on an annual basis.

### **Posting of Public Housing Maximum Rents**

#### LHA Policy

LHA will publicly post the schedule of public housing maximum rents in a conspicuous manner in the applicable LHA or project office.

### **Documentation of Public Housing Maximum Rents**

### LHA Policy

LHA will maintain records that document how LHA determined the 95th percentile of TTP, whether the maximum rent was determined LHA -wide, project-wide, or with groupings of projects, and the methodology used to determine maximum rents for each unit size.

## **PART III: FAMILY DEBTS TO THE LHA**

### **16-III.A. OVERVIEW**

This part describes LHA's policies for recovery of monies owed to LHA by families.

#### LHA Policy

When an action or inaction of a resident family result in the underpayment of rent or other amounts, LHA holds the family liable to return any underpayments to the LHA.

LHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When a family refuses to repay monies owed to LHA, LHA will utilize other available collection alternatives including, but not limited to, the following: Collection agencies, Small claims court Civil law suit, State income tax set-off program when available.

### **16-III.B. REPAYMENT POLICY Family Debts to the LHA**

#### LHA Policy

Any amount owed to LHA by a public housing family must be repaid. If the family is unable to repay the debt within 30 days, LHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, LHA will terminate the family's tenancy in accordance with the policies in Chapter 13. LHA will also pursue other modes of collection.

### **General Repayment Agreement Guidelines**

#### ***Down Payment Requirement***

#### LHA Policy

The family must pay the equivalent of the first 3 month's payment at the time of signing the repayment agreement.

#### ***Payment Thresholds***

Notice PIH ~~2010-19~~ 2017-12 recommends that the total amount that a family must pay each month—the family's monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family's monthly adjusted income, which is considered "affordable." Moreover, Notice PIH ~~2010-19~~ 2017-12 acknowledges that PHAs have the discretion to

establish "thresholds and policies" for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

LHA Policy LHA has established the following thresholds for repayment of debts: Amounts over \$5,000: tenants may request an alternate payment plan that does not exceed 12 months. Amounts between \$3,000 and \$5,000: must be repaid within 12 months. Amounts between \$2,000 and \$2,999: must be repaid within 6 months. Amounts within \$1,000 and \$1,999: must be repaid within 3 months. Amounts under \$1,000 must be repaid within 2 months. If a family can provide evidence satisfactory to LHA that the threshold applicable to the family's debt would impose an undue hardship, LHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, LHA will consider all relevant information, including the following:

- The amount owed by the family to LHA.
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family's control.
- The family's current and potential income and expenses.
- The family's current family share as calculated under 24 CFR 982.515.
- The family's history of meeting its financial responsibilities.

## ***Execution of the Agreement***

### LHA Policy

Any repayment agreement between LHA and a family must be signed and dated by LHA and by the head of household and spouse/co-head (if applicable).

### ***Due Dates***

#### LHA Policy

All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th. LHA may adjust the due date to meet the tenant income pattern.

### ***Late or Missed Payments***

#### LHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the LHA, LHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and LHA will terminate tenancy in accordance with the policies in Chapter 13.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and LHA will demand payment in full. If payment is not made LHA will terminate tenancy in accordance with the policies in Chapter 13.

### ***No Offer of Repayment Agreement***

#### LHA Policy

LHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### **Repayment Agreements Involving Improper Payments**

Notice PIH ~~2010-19~~ 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

A reference to the items in the public housing lease that state the family's obligation to provide true and complete information at every reexamination and the grounds on which LHA may terminate assistance because of a family's action or failure to act

A statement clarifying that each month the family not only must pay to LHA the monthly payment amount specified in the agreement but must also pay to LHA the family's monthly rent.

A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases

A statement that late or missed payments constitute default of the repayment agreement and may result in termination of tenancy

## **PART IV: PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS)**

### **16-IV.A. OVERVIEW**

The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among PHAs, public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations.

### **16-IV.B. PHAS INDICATORS [24 CFR 902 Subparts A, B, C, D, and E]**

The information below lists each of the PHAS indicators, the points possible under each indicator, and a brief description of each indicator. A PHA's performance is based on a combination of all four indicators.

#### **Indicator 1: Physical condition of the PHA's projects**

##### **Maximum Score: 40**

- The objective of this indicator is to determine the level to which a PHA is maintaining its public housing in accordance with the standard of decent, safe, sanitary, and in good repair.
- To determine the physical condition of a PHA's projects, inspections are performed of the following five major areas of each public housing project: site, building exterior, building systems, dwelling units, and common areas.

The inspections are performed by an independent inspector arranged by HUD, and include a statistically valid sample of the units in each project in the PHA's public housing portfolio.

**Indicator 2: Financial condition of the PHA's projects**

**Maximum Score: 25**

- The objective of this indicator is to measure the financial condition of the PHA's public housing projects for the purpose of evaluating whether HACC has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary, and in good repair.
- A PHA's financial condition is determined by measuring each public housing project's performance in each of the following sub-indicators: quick ratio, month's expendable net assets ratio, and debt service coverage ratio.

**Indicator 3: Management operations of the PHA's projects**

**Maximum Score: 25**

- The objective of this indicator is to measure certain key management operations and responsibilities of a PHA's projects for the purpose of assessing the PHA's management operations capabilities.
- Each project's management operations are assessed based on the following sub-indicators: occupancy, tenant accounts receivable, and accounts payable.
- An on-site management review may be conducted as a diagnostic and feedback tool for problem performance areas, and for compliance. Management reviews are not scored.

**Indicator 4: Capital Fund**

**Maximum Score: 10**

- The objective of this indicator is to measure how long it takes HACC to obligate capital funds and to occupy units.
- The PHA's score for this indicator is measured at HACC level and is based on the following sub-indicators: timeliness of fund obligation and occupancy rate.

**16-IV.C. PHAS SCORING [24 CFR 902 Subpart F]**

HUD's Real Estate Assessment Center (REAC) issues overall PHAS scores, which are based on the scores of the four PHAS indicators, and the sub-indicators under each indicator. The PHA's indicator scores are based on a weighted average of the PHA's public housing projects' scores. PHAS scores translate into a designation for each PHA as high performing, standard, substandard, or troubled.

A high performer is a PHA that achieves an overall PHAS score of 90 or greater, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A standard performer is a PHA that has an overall PHAS score between 60 and 89, and achieves a score of at least 60 percent of the points available under the physical, financial, and management indicators and at least 50 percent of the points available under the capital fund indicator.

A substandard performer is a PHA that has an overall PHAS score of at least 60 percent and achieves a score of less than 60 percent under one or more of the physical, financial, or management indicators.

A troubled performer is a PHA that achieves an overall PHAS score of less than 60, or achieves less than 50 percent of the total points available under the capital fund indicator.

These designations can affect a PHA in several ways:

High-performing PHAs are eligible for incentives including relief from specific HUD requirements and bonus points in funding competitions [24 CFR 902.71].

PHAs that are standard performers may be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(1)].

PHAs that are substandard performers will be required to submit and operate under a corrective action plan to eliminate deficiencies in the PHA's performance [24 CFR 902.73(a)(2)].

PHAs with an overall rating of "troubled" are subject to additional HUD oversight, and are required to enter into a memorandum of agreement (MOA) with HUD to improve PHA performance [24 CFR 902.75].

PHAs that fail to execute or meet MOA requirements may be referred to the Assistant Secretary to determine remedial actions, including, but not limited to, remedies available for substantial default [24 CFR 902.75(g) and 24 CFR Part 907].

PHAs must post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and designation [24 CFR 902.64(b)(2)].

## **PART V: RECORD KEEPING**

### **16-V.A. OVERVIEW**

LHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, LHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-V.B. RECORD RETENTION**

LHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

#### LHA Policy

During the term of each public housing tenancy, and for at least four years thereafter, LHA will keep all documents related to a family's eligibility, tenancy, and termination. In addition, LHA will keep the following records for at least four years:

- An application from each ineligible family and notice that the applicant is not eligible
- Lead-based paint records as required by 24 CFR 35, Subpart B Documentation supporting the establishment of flat rents and the public housing maximum rent
- Documentation supporting the establishment of utility allowances and surcharges Documentation related to PHAS Accounts and other records supporting LHA budget and financial statements for the program
- Other records as determined by LHA or as required by HUD If a hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 14-II.A.

### **16-V.C. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### LHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized LHA staff.

LHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

#### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or LHA may release the information collected.

#### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification (UIV) Data*.

#### LHA Policy

Prior to utilizing HUD's EIV system, LHA will adopt and implement EIV security procedures required by HUD.



## **Criminal Records**

LHA may only disclose the criminal conviction records which LHA receives from a law enforcement agency to officers or employees of the LHA, or to authorized representatives of LHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

LHA must establish and implement a system of records management that ensures that any criminal record received by LHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to LHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

LHA must establish and implement a system of records management that ensures that any sex offender registration information received by LHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to LHA action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

## **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. LHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If LHA receives a verification document that provides such information, LHA should not place this information in the tenant file. LHA should destroy the document.

## **Domestic Violence, Dating Violence, or Stalking Records**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, or stalking, see section 16-VII.E.

## **PART VI: REPORTING REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION-ELEVATED BLOOD LEAD LEVEL**

### **16-VI.A. REPORTING REQUIREMENTS [24 CFR 35.1130(e); Notice PIH 2017-13]**

LHA has certain responsibilities relative to children with ~~environmental intervention elevated~~ blood lead levels that are living in public housing.

LHA must report the name and address of a child identified as having an ~~environmental intervention elevated~~ blood lead level (EBLL) to the public health department within ~~five~~ 5 business days of being so notified by any other medical health care professional. LHA must also report each known case of a child with an ~~environmental intervention blood-lead level~~ EBLL to the HUD field office.

#### LHA Policy

LHA will provide the public health department written notice of the name and address of any child identified as having an ~~environmental intervention elevated~~ blood lead level.

LHA will provide written notice of each known case of a child with an ~~environmental intervention blood level~~ EBLL to the HUD field office, ~~and to HUD's Office of Lead Hazard Control (OLHCHH)~~, within five ~~5~~-business days of receiving the information.

## **PART VII: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-VII.A. OVERVIEW**

The Violence against Women Act of 2005 (VAWA) provides special protections for victims of domestic violence, dating violence, and stalking who are applying for or receiving assistance under the public housing program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and LHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and LHA policies are located in Chapter 3, "Eligibility" (sections 3-I.C and 3-III.F); Chapter 5, "Occupancy Standards and Unit Offers" (section 5-II.D); Chapter 8, "Leasing and Inspections" (section 8-I.B); Chapter 12, "Transfer Policy" (sections 12-III.C, 12-III.F, and 12-IV.D); and Chapter 13, "Lease Terminations" (sections 13-III.F and 13-IV.D).

## **16-VII.B. DEFINITIONS [24 CFR 5.2003]**

As used in VAWA:

The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

The term *immediate family member* means, with respect to a person:

- A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
- Any other person living in the household of that person and related to that person by blood and marriage.

The term *stalking* means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
- To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
- In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

## **16-VII.C. NOTIFICATION [24 CFR 5.2005(a)]**

### **Notification to Public**

LHA adopts the following policy to help ensure that all actual and potential beneficiaries of its public housing program are aware of their rights under VAWA.

#### LHA Policy

LHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the PHA's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or Florida Relay Number 711 (TTY) (included in Exhibit 16-1) Contact information for local victim advocacy groups or service providers.

## **Notification to Applicants and Tenants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform public housing applicants and tenants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

The PHA must distribute a notice of VAWA rights, along with the VAWA self-certification form (HUD-5382) at each of these three junctures.

### PHA Policy

The VAWA information provided to applicants and participants will consist of the notices in Exhibit 16-1 and 16-2.

sThe PHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. The PHA will also include such information in all notices of denial of assistance (see section 3-III.F).

The PHA will provide all tenants with information about VAWA at the time of admission (see section 8-I.B) and at annual reexamination. The PHA will also include such information in all lease termination notices (see section 13-IV.D).

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a tenant following an incident of domestic violence, Notice PIH 2006-42 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

### PHA Policy

Whenever the PHA has reason to suspect that providing information about VAWA to a public housing tenant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim.

#### **16-VII.D. DOCUMENTATION [24 CFR 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. LHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the LHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator
- (2) A federal, state, tribal, territorial, or local police report or court record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

LHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

#### LHA Policy

Any request for documentation of domestic violence, dating violence, or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

LHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by LHA will be in writing.

#### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where LHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, LHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). LHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### LHA Policy

If presented with conflicting certification documents (two or more forms HUD-5382) from members of the same household, LHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

**Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

LHA has the discretion to provide benefits to an individual based solely on the individual’s statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

LHA Policy

If LHA accepts an individual’s statement or other corroborating evidence of domestic violence, dating violence, or stalking, LHA will document acceptance of the statement or evidence in the individual’s file.

**Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as LHA may allow, LHA may deny relief for protection under VAWA.

**16-VII.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to LHA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that LHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

LHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, LHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**EXHIBIT 16-1: SAMPLE NOTICE TO PUBLIC HOUSING APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2006 protects individuals who are victims of domestic violence, dating violence, and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

**Protections for Victims**

If you are eligible for public housing, the housing authority cannot refuse to admit you to the public housing program solely because you are a victim of domestic violence, dating violence, or stalking.

If you are the victim of domestic violence, dating violence, or stalking, the housing authority cannot evict you based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, or stalking that are caused by a member of your household or a guest can’t be the reason for evicting you if you were the victim of the abuse.

## **Reasons You Can Be Evicted**

The housing authority can still evict you if the housing authority can show there is an *actual and imminent* (immediate) threat to other tenants or housing authority staff if you are not evicted. Also, the housing authority can evict you for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking against you. The housing authority cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

## **Removing the Abuser from the Household**

The housing authority may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the public housing unit. If the housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, the housing authority must follow federal, state, and local eviction procedures.

## **Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking**

The housing authority can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, or stalking. It must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority is free to extend the deadline. There are three ways you can prove that you are a victim: Complete the certification form given to you by the housing authority. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.

Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."

Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the housing authority may evict you.

## **Confidentiality**

The housing authority must keep confidential any information you provide about the violence against you, unless:

You give written permission to the housing authority to release the information.

The housing authority needs to use the information in an eviction proceeding, such as to evict your abuser.

A law requires the housing authority to release the information.

If release of the information would put your safety at risk, you should inform the housing authority.

## **VAWA and Other Laws**

VAWA does not limit the housing authority's duty to honor court orders about access to or control of a public housing unit. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, or stalking.

## **For Additional Information**

If you have any questions regarding VAWA, please contact Kasandra Davis, Assistant Director of Housing at (863) 687-2911.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

## **Definitions**

For purposes of determining whether a public housing applicant or tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse

- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction

VAWA defines ***dating violence*** as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines ***stalking*** as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

## **GLOSSARY**

### **A. ACRONYMS USED IN SUBSIDIZED HOUSING**

**AAF** Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)

**ACC** Annual contributions contract

**ADA** Americans with Disabilities Act of 1990

**BR** Bedroom

**CDBG** Community Development Block Grant (Program)

**CFR** Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)

**CPI** Consumer price index (published monthly by the Department of Labor as an inflation indicator)

**EID** Earned income disallowance

**EIV** Enterprise Income Verification

**FDIC** Federal Deposit Insurance Corporation

**FHA** Federal Housing Administration

**FICA** Federal Insurance Contributions Act (established Social Security taxes)

**FMR** Fair market rent

**FR** Federal Register

**FSS** Family Self-Sufficiency (Program)

**FY** Fiscal year

**FYE** Fiscal year end

**GAO** Government Accountability Office

**GR** Gross rent

**HAP** Housing assistance payment

**HCV** Housing choice voucher  
**HQS** Housing quality standards  
**HUD** Department of Housing and Urban Development  
**HUDCLIPS** HUD Client Information and Policy System  
**IPA** Independent public accountant  
**IRA** Individual Retirement Account  
**IRS** Internal Revenue Service  
**JTPA** Job Training Partnership Act **LBP** Lead-based paint **MSA** Metropolitan statistical area (established by the U.S. Census Bureau) **MTCS** Multi-family Tenant Characteristics System (now the Form HUD-50058 sub-module of the PIC system)  
**MTW** Moving to Work  
**NOFA** Notice of funding availability  
**OIG** HUD's Office of Inspector General  
**OMB** Office of Management and Budget  
**PHA** Public housing agency  
**PIC** PIH Information Center  
**PIH** (HUD Office of) Public and Indian Housing  
**PS** Payment standard  
**QC** Quality control  
**QHWRA** Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)  
**REAC** (HUD) Real Estate Assessment Center  
**RFP** Request for proposals  
**RFTA** Request for tenancy approval  
**RIGI** Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)  
**SEMAP** Section 8 Management Assessment Program  
**SRO** Single room occupancy  
**SSA** Social Security Administration  
**SSI** Supplemental security income  
**TANF** Temporary assistance for needy families  
**TPV** Tenant protection vouchers  
**TR** Tenant rent  
**TTP** Total tenant payment  
**UA** Utility allowance  
**UIV** Upfront income verification  
**URP** Utility reimbursement payment  
**VAWA** Violence Against Women Reauthorization Act of 2005

## **B. GLOSSARY OF SUBSIDIZED HOUSING TERMS**

**Absorption.** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

**Accessible.** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.

**Adjusted income.** Annual income, less allowable HUD deductions and allowances.

**Administrative fee.** Fee paid by HUD to the PHA for administration of the program. See §982.152. **Administrative plan.** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

**Admission.** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.



**Amortization payment.** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

**Annual contributions contract (ACC).** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

**Annual income.** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**Applicant (applicant family).** A family that has applied for admission to a program but is not yet a participant in the program.

**Area exception rent.** An amount that exceeds the published FMR. See 24 CFR 982.504(b).

**As-paid states.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**Assets.** (See *net family assets*.)

**Auxiliary aids.** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

**Bifurcate.** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

**Child.** A member of the family other than the family head or spouse who is under 18 years of age.

**Child care expenses.** Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

**Citizen.** A citizen or national of the United States.

**Co-head.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

**Common space.** In shared housing, the space available for use by the assisted family and other occupants of the unit.

**Computer match.** The automated comparison of databases containing records about individuals.

**Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA. **Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract authority.** The maximum annual payment by HUD to a PHA for a funding increment.

**Cooperative** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which federal, state or

local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

-The length of the relationship

-The type of relationship

-The frequency of interaction between the persons involved in the relationship

**Dependent.** 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 person with a disability, or is a full-time student.

**Dependent child.** In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

**Disability assistance expenses.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

**Disabled family.** A family whose head, co-head, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See *person with disabilities*.

**Disallowance.** Exclusion from annual income.

**Displaced family.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.

**Domestic violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Domicile.** The legal residence of the household head or spouse as determined in accordance with state and local law.

**Drug-related criminal activity.** As defined in 42 U.S.C. 1437f(f)(5).

**Drug-trafficking.** The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802). **Economic self-sufficiency program.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603(c).

**Elderly family.** A family whose head, co-head, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

**Elderly person.** An individual who is at least 62 years of age.

**Eligible family (Family).** A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR.

**Employer identification number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**Evidence of citizenship or eligible status.** The documents which must be submitted as evidence of citizenship or eligible immigration status. (See 24 CFR 5.508(b).)

**Extremely low-income family.** A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (See 24 CFR 5.603.)

**Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in the property.

**Fair Housing Act.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

**Family.** Includes but is not limited to the following, and can be further defined in PHA policy. -A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size) -An elderly family or a near-elderly family -A displaced family -The remaining member of a tenant family -A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Federal agency.** A department of the executive branch of the Federal Government.

**Foster child care payment.** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

**Full-time student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (See 24 CFR 5.603)

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

**HAP contract.** The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**Household.** A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** See *public housing agency*.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The U.S. Department of Housing and Urban Development.

**Immediate family member.** A spouse, parent, brother, sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

**Imputed asset.** An asset disposed of for less than fair market value during the two years preceding examination or reexamination.

**Imputed income.** The HUD passbook rate multiplied by the total cash value of assets. The calculation is used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income for eligibility.** Annual income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Individual with handicaps.** See *person with disabilities*.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Institution of higher education.** An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

**Jurisdiction.** The area in which the PHA has authority under state and local law to administer the program.

**Landlord.** Either the owner of the property or his/her representative, or the managing agent or his/her representative, as shall be designated by the owner.

**Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

**Live-in aide.** A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

**Local Preference.** A preference used by the PHA to select among applicant families.

**Low-Income Family.** A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. (A special housing type: see 24 CFR 982.620 and 982.621.)

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624.

**Medical expenses.** Medical expenses, including medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance (a deduction for elderly or disabled families only). These allowances are given when calculating adjusted income for medical expenses in excess of 3 percent of annual income.

**Minor.** A member of the family household other than the family head or spouse, who is under 18 years of age.

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of *cooperative*.

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**Net family assets.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

-In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

-In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Notice of funding availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Office of General Counsel (OGC).** The General Counsel of HUD.

**Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.

**PHA Plan.** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

**PHA's quality control sample.** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

**Participant (participant family).** A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Person with disabilities.** For the purposes of program eligibility. A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. For the purposes of reasonable accommodation. A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment. **Portability.** Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA. **Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds. **Previously unemployed.** With regard to the earned income disallowance, a person with disabilities who has earned, in the 12 months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

**Private space.** In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

**Processing entity.** The person or entity that, under any of the programs covered is responsible for making eligibility and related determinations and any income reexamination. In the HCV program, the "processing entity" is the "responsible entity."

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

**Public housing agency (PHA).** Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Qualified family** (under the earned income disallowance). A family participating in an applicable assisted housing program or receiving HCV assistance:

-Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

-Whose annual income increases as a result of 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

-Whose annual income increases, as a result of 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 funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not 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.

**Qualified census tract.** With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Reasonable accommodation.** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported. **Remaining member of the tenant family.** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

**Residency preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

**Residency preference area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended.

**Section 214 covered programs.** The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

**Security deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)

**Single Person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

**Social security number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

**Special housing types.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**Specified welfare benefits reduction.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

**Spouse.** The marriage partner of the head of household.

**Stalking.** To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

**State wage information collection agency (SWICA).** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

**Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension.** Stopping the clock on the term of a family's voucher after the family submits a request for tenancy approval. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called *tolling*.

**Tax credit rent.** With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

**Tenancy addendum.** For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See *family rent to owner*.

**Term of lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total tenant payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

**Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Very low-income family.** A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (housing choice voucher).** A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Voucher holder.** A family holding a voucher with an unexpired term (search time).

**Voucher program.** The housing choice voucher program.

**Waiting list admission.** An admission from the PHA waiting list.

**Welfare assistance.** Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (984.103(b)), *welfare assistance* includes only cash maintenance payments from federal or state programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or social security.





# Analysis of Impediments to Fair Housing Choice

Housing Authority of the City of Lakeland

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Appendix 1: Section 8 Questionnaire

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## 1. Introduction/Executive Summary

The mission of the Housing Authority of the City of Lakeland (HACL), FL-011, is to provide quality, affordable housing and self-sufficiency opportunities in an effective and professional manner, in the city of Lakeland and Polk County, Florida.

The HACL receives federal funds annually from the U.S. Department of Housing and Urban Development (HUD). Under this relationship, HUD requires all Public Housing Authorities (PHA) to prepare Agency Plans, including an Annual Plan. These Plans provide a ready source for interested parties to locate basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services, and informs HUD, families served by the PHA, and members of the public of the PHA's mission, goals and objectives for serving the needs of low- income, very low- income, and extremely low- income families. The HACL's current Annual Plan covers the time period of January 1, 2018 through December 31, 2018. As part of the PHA Plan, the HACL consults with the City of Lakeland, NAACP-Lakeland Chapter, and other stakeholders regarding any identified impediments to housing choice and to develop a plan to address those impediments.

The Fair Housing Act of 1968 required that all HUD programs be administered in a manner that affirmatively furthers fair housing. The HACL is committed to affirmatively furthering fair housing by:

- Conducting an analysis to identify impediments to fair housing choice;
- Taking appropriate actions to overcome the effects of any impediments identified through this analysis; and
- Maintaining records reflecting the analysis and actions taken.

The objectives of this process are broad, including

- Analyzing and eliminating housing discrimination in the jurisdiction;
- Promoting fair housing choice for all persons;
- Providing opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability or national origin;
- Promoting housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities; and
- Fostering compliance with the nondiscrimination provisions of the federal Fair Housing Act.

By undertaking this review, the Analysis of Impediments document establishes measures for the HACL and serves as:

- A comprehensive review of the HACL's administrative policies, procedures and practices with regard to fair housing opportunities;

- An assessment of how those laws, regulations, policies, and procedures affect the location, availability, and accessibility of housing; and
- An assessment of public and private sector conditions affecting fair housing choice.

The HACL is committed to furthering fair housing choice throughout its public housing communities and all administered programs.

## 2. Jurisdictional Background Data

The HACL was created by the State of Florida in 1939 pursuant to Florida Statute 421. The HACL manages affordable housing programs that offer many diverse housing and self-sufficiency opportunities to families and individuals residing in the city of Lakeland within Polk County, Florida

### Housing Profile

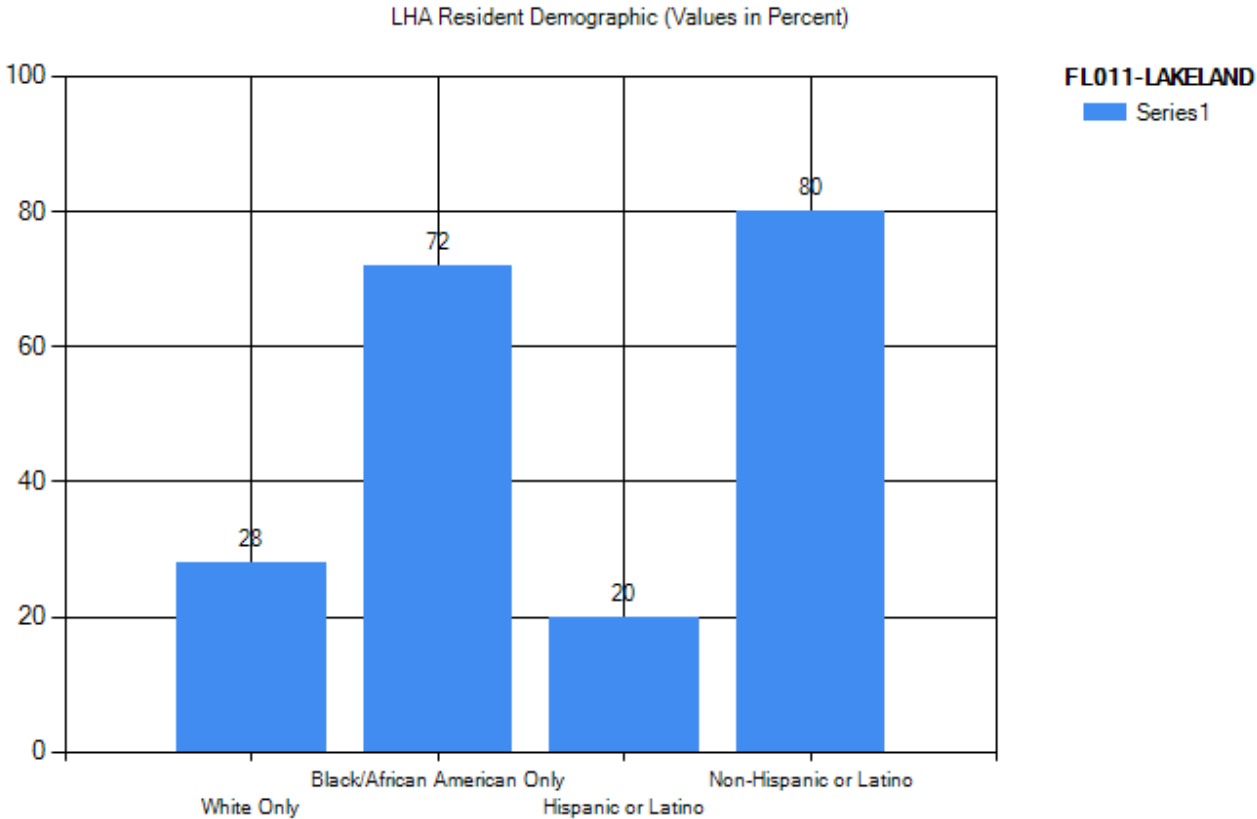
The HACL affordable housing programs include conventional public housing, Section 8 and the mixed income affordable housing opportunities. The HACL Section 8 Program includes 1,540 Housing Choice Vouchers (HCVs) and the agency self-manages all of its communities including the following public housing and mixed income developments:

Public Housing Program		
Community	# Units	Type
Westlake Apartments	120	Multi-Family
John Wright Homes	20	Multi-Family
Cecil Gober Villas	37	Elderly
Hampton Hills Homes	8	Homeownership
<b>Total</b>	<b>185</b>	

Mixed Income Communities			
Community	#Units	Type	Unit Mix
Dakota Park	40	Multi-Family	20 LIHTC, 20 Public Housing/LIHTC
Washington Renaissance	78	Elderly	48 LIHTC, 30 Public Housing/LIHTC
Washington Renaissance	118	Multi-Family	39 LIHTC, 79 Public Housing/LIHTC
Colton Meadow	72	Multi-Family	LIHTC
Villas at Lake Bonnet Homes	75	Multi-Family	LIHTC with 18 Project based Section 8
The Manor at West Bartow	100	Elderly	LIHTC, 99 Project based Section 8
<b>Total</b>	<b>483</b>		

# Demographic Data

Demographics for the HACL are reflected below:



Demographics of Public Housing Residents		
	Number of Residents	Comments
Race:		
• Black/African-American	528	
• Native Hawaiian/Other Pacific Islander	0	
• White	175	
• American Indian/Alaska Native	0	
• Other	0	
Ethnicity:		
• Hispanic	147	
• Non-Hispanic	556	
Disabled Persons	124	
Head of Household:		
• Male	41	
• Female	239	

Demographics of Section 8 Participants		
	Number of Residents	Comments
Race:		
• Black/African-American	2096	
• Native Hawaiian/Other Pacific Islander	1	
• White	1014	
• American Indian/Alaska Native	3	
• Other	4	
Ethnicity:		
• Hispanic	734	
• Non-Hispanic	2384	
Disabled Persons	717	
Head of Household:		
• Male	177	
• Female	1017	

## Income Data

The HACL's average household income ranges from a low of \$0.00 to a high of \$49,443.00 with an overall average of \$13,642.00.

### 3. Evaluation of Jurisdiction's Current Fair Housing Legal Status

There have been no fair housing complaints or fair housing reviews in the last five years. Also, no fair housing discrimination suits have been filed against the HACL.

The Fair Housing Act and the state civil right laws recognize the following seven protected classes as: race, religion, color, sex, familial status, national origin and disability. If, however, a person feels they were discriminated against based on the perception of the person's sexual orientation or gender identity, a claim may be filed under the Fair Housing Act.

### 4. Considerations for Analysis of Impediments to Fair Housing Choice

As part of the Analysis of Impediments, a questionnaire was completed for programs administered by the HACL. The results are provided in Appendices 1 and 2. In addition, the HACL identified impediments to Fair Housing Choice.

#### Identified and Potential Impediments

##### Impediment #1: Isolation due to affordability issues

Section 8 Voucher Program recipients may not seek to live in areas with higher quality housing since landlords may not be willing to rent to lower income individuals. As a result, they may choose housing in specific areas with lower quality housing.

##### Impediment #2: Ability of low-income households interested in becoming homeowners

Due to low income and credit worthiness, families below the poverty level often find it difficult to purchase homes.

##### Impediment #3: Public awareness

Individuals may not know how to recognize discrimination and sometimes lack knowledge of Fair Housing Choice, specifically regarding their rights and responsibilities on housing issues.

##### Impediment #4: Physical accessibility

There is a shortage of inventory and a lack of knowledge regarding rights of those needing physical

accessibility accommodations that are reasonable under the fair housing laws.

**Impediment #5: Discrimination due to race, ethnicity, gender, disability**

The HACL recognizes that there is the potential for discrimination based on race, ethnicity gender and disability. As such, we have identified discrimination as an impediment.



## 5. Conclusions and Recommended Actions

### Impediment #1: Isolation due to affordability issues

Section 8 Voucher Program recipients may not seek to live in areas with higher quality housing since landlords may not be willing to rent to lower income individuals. As a result, they may choose housing in specific areas with lower quality housing.

- Action 1 – Continue to assist Section 8 Voucher Program recipients in efforts to locate higher quality housing.
  - List available rental units is available in the lobby of the HACL office
- Action 2 – Educate and work with landlords to increase the availability of Section 8 properties throughout the city of Lakeland
  - Host an Information Workshop on the Section 8 Program for new landlords
  - Post a copy of the Section 8 Landlord Packet on the HACL Website for new landlords to download
  - Mail information flyers with updates on the Section 8 program to existing and potential landlords
- Action 3 – When working with developers, encourage mixed income, universal design developments and utilizing the Uniform Federal Accessibility Standards(UFAS).
  - Contracts with developers require designs for new housing units to comply with UFAS and other related HUD requirements

### Impediment #2: Ability of low-income households to purchase housing

Due to low income and credit worthiness, families below the poverty level often find it difficult to purchase homes.

- Action 1 – Encourage and market financial and credit counseling services offered through other entities through the City of Lakeland and Polk County, Florida.
  - Contract with a HUD approved and certified homeownership counseling agency to assist potential homebuyers with credit repair and budgeting
- Action 2 – Continue work with families who have expressed an interest in homeownership.
  - Contract with a HUD approved and certified homeownership counseling agency to provide pre- and post-homeownership counseling
  - Develop Homeownership Program that provides homeownership

opportunities for residents of public housing

- Action 3 – Discuss hosting a Housing Fair with banks, social service agencies that assist with financial and credit services and education to aid with housing empowerment.

### **Impediment #3: Public awareness**

Individuals may not know how to recognize discrimination and sometimes lack knowledge of Fair Housing, specifically regarding their rights and responsibilities on housing issues.

- Action 1 – Post Fair Housing information on the HACL’s website and facilitate fair housing education.
- Action 2 – Inform/educate landlords through outreach efforts including trainings, meetings, literature and other methods.
  - Host an Information Workshop on the Section 8 Program for new landlords
  - Mail information flyers with updates on the Section 8 program to existing and potential landlords
- Action 3 – Support consumer education programs, such as homebuyer counseling and education.
  - Contract with a HUD approved and certified homeownership counseling agency to provide pre- and post-homeownership counseling
  - Work with local agency to provide a consumer education and financial counseling workshop on-site
- Action 4 – Participate in Fair Housing education efforts.
  - Work with the City of Lakeland and local partners
- Action 5 – Promote Fair Housing month.
  - Work with the City of Lakeland and local partners
- Action 6 –Review and update Affirmatively Furthering Fair Housing Policy and Analysis to Impediments to Fair Housing Choice documents.
  - Present any updates to the HACL Board of Commissioners
  - Post updated Fair Housing Choice documents on HACL website

### **Impediment #4: Physical accessibility**

There is a shortage of inventory and a lack of knowledge regarding rights of those needing physical accessibility accommodations that are reasonable under the fair housing laws.

- Action 1 – Educate landlords and residents on reasonable accommodations requirements.

- Action 2 – Use of available resources for necessary accessibility modifications.
- Action 3 – When undergoing substantial rehab of units, use universal design, where possible, to allow individuals to age in place and accessibility.
- Action 4 – When working with developers, encourage mixed income, universal design developments and utilization of the Uniform Federal Accessibility Standards(UFAS).
  - HACL will develop a new senior community, Micro-Cottages at Williamstown, that complies with UFAS
  - Contracts with developers require designs for new housing units to comply with UFAS and other related HUD requirements
  - Contracts with developers require mixed income rental housing units that comply with the requirements of Low Income Housing Tax Credit program
- Action 5 – A physically disabled person is a member of the HACL Board of Commissioners
  - Physically disabled HACL commissioner is a member of a State-wide Board that reviews accessibility accommodations and related items
  - Physically disabled HACL commissioner is a member of a NAHRO Diversity Task Force

**Impediment #5: Discrimination due to race, ethnicity, gender, disability**

- Action 1 – Continue relationship with City of Lakeland and other organizations to promote fair housing.
- Action 2 – Educate staff on recognizing discrimination.
  - HACL hosted an agency-wide training for staff conducted by a Fair Housing consultant
- Action 3 – Educate Staff by attendance in fair housing training.
  - HACL hosted an agency-wide training for staff conducted by a Fair Housing consultant

## **7. Signature**

The Housing Authority City of Lakeland as a recipient of federal funding and in order to comply with Affirmatively Further Fair Housing (AFFH) requirements has conducted an Analysis of Impediments to Fair Housing Choice and affirms that the Housing Authority will support the activities to assure nondiscrimination in the provision of housing.

\_\_\_\_\_  
Benjamin Stevenson, President/CEO  
Housing Authority City of Lakeland

\_\_\_\_\_  
Date

## APPENDICES

### Appendix 1

<b>Section 8 Program</b>		
<b>Question</b>	<b>Response</b>	<b>Comments</b>
<b>Has the Section 8 Program been found in noncompliance with any civil rights laws or regulations?</b>	No	
<b>Are there any court suits involving tenant application, selection and assignment policies/procedures?</b>	No	
<b>What is the pattern, by location and family type, of minority and non-minority voucher holders who rent your units?</b>	No	
<b>Are minorities located primarily in minority neighborhoods?</b>	Yes	
<b>What steps does Agency take to promote housing choice across all neighborhoods?</b>	Regular outreach to promote the program to landlords in all areas of jurisdiction.  New applicants attend a briefing session prior to Voucher issuance which includes information on choosing a unit	
<b>Assist voucher holders who received their vouchers from Agencies in other jurisdictions?</b>	Yes – if they choose their portability option  In instances of portability	
<b>Assist voucher holders with disabilities by providing assistance in locating available accessible housing?</b>	Yes. All families receive the same information.  Offer a list at orientation of all known rental complexes in the City of Lakeland.	

**Section 8 Program**

Question	Response	Comments
<p><b>Does the LHA provide up-to-date information about facilities and services available in all neighborhoods in which housing suitable to the needs of the voucher holder is available (locations of schools, day care, health and welfare and other social service agencies)?</b></p>	<p>Yes. This list is located in the orientation packet that is provided upon request.</p>	
<p><b>Does the Agency encourage voucher holders, particularly minorities, to look for housing in neighborhoods that are not traditional residential areas for the holder in question?</b></p>	<p>All families receive the same information.</p> <p>All participants are given briefed when they come in for the initial briefing. We also maintain a list of available units with landlord contact information, and this is available to all persons with a Voucher. These units typically include a wide variety of neighborhoods.</p>	
<p><b>Has Agency completed a self-evaluation of its policies, procedures and practices to determine whether they may adversely impact persons with disabilities during the application or tenancing process? If so, have all deficiencies been addressed?</b></p>	<p>Our policies and procedures are continuously evaluated to ensure we do not adversely impact applicants or tenants.</p> <p>No adverse impact identified</p>	
<p><b>Has Agency conducted a needs assessment to identify need for accessible units and does it have a transition plan to assure access?</b></p>	<p>To best serve applicants and tenants we constantly review our policies and procedures. Inspections are also conducted.</p>	
<p><b>What steps has the Agency taken to assure that persons with disabilities have access to the same range of housing choices and types as are offered to persons without disabilities?</b></p>	<p>All applicants and tenants are treated in a fair and consistent manner. Information is available to tenants who require special accommodations, and we do our best to ensure their needs are met.</p>	

<b>Public Housing Questionnaire</b>		
<b>Questions</b>	<b>Response</b>	<b>Comments</b>
<b>Has the PHA been found in noncompliance with civil rights laws or regulations?</b>	No	
<b>Are there any court suits involving tenant application, selection, assignment policies and procedures?</b>	No	
<b>Are there concentrations of racial or ethnic groups in one or more public housing site?</b>	Applications accepted from all persons.  The PHA is undertaking a 5-year plan to address redevelopment, modernization and sustainability of all sites.  The plan also addresses educational opportunities designed to improve the quality of life and economic position of residents.	
<b>Does the PHA policy permit applicants to state a preference for one or more projects?</b>	Yes  All applicants may apply to multiple developments	
<b>Are transfers permitted by current tenants?</b>	Yes  Current policy allows for transfers for special accommodations	
<b>Does the PHA permit applicants to reject several unit offers without losing their place on the waiting list?</b>	Yes  There is one rejection for good cause. Applicants may remain on list, but their application is refiled as of the date of the rejection	
<b>What are the PHA's policies for admitting persons with mental or nonphysical disabilities?</b>	Persons are accepted with any disability	

## Public Housing Questionnaire

Questions	Response	Comments
<b>Has the PHA completed is Section 504 (of the Rehabilitation Act of 1973) assessments of need?</b>	Yes	
<b>Has the PHA completed a self-evaluation of its policies/procedures/practices to determine if they adversely impact persons with disabilities during application or tenanting process?</b>	Yes  Not all deficiencies are corrected due to age of properties and loss of Capital Funds	
<b>Has the PHA completed a needs assessment to identify need for accessible units?</b>	Yes	



# LAKELAND HOUSING AUTHORITY

## 2018 FLAT RENT COMPARISON AND RECOMMENDATION BASED ON HUD PIH NOTICE 2017-23

### 2019 Fair Market Rents

	<b>ONE BEDROOM</b>	<b>TWO BEDROOMS</b>	<b>THREE BEDROOMS</b>	<b>FOUR BEDROOMS</b>
100%	708	925	1233	1532
80%	567	740	987	1226

### Current and Proposed Flat Rent Rates

AMP	COMMUNITY NAME	ONE BEDROOM	TWO BEDROOMS	THREE BEDROOMS	FOUR BEDROOMS	FIVE BEDROOMS
<b>AMP I</b>	<i>Cecil Gober Villas:</i>					
	▪ Current	\$635	--	--	--	--
	▪ <b>Proposed</b>	<b>\$663</b>	--	--	--	--
	<i>John Wright Homes:</i>					
	▪ Current	--	\$780	\$1,051	--	--
	▪ <b>Proposed</b>	--	<b>\$800</b>	<b>\$1,255</b>	--	--
	<i>West Lake Apartments:</i>					
	▪ Current	\$593	\$786	\$1,055	\$1,359	--
	▪ <b>Proposed</b>	<b>\$599</b>	<b>\$688</b>	<b>\$1,089</b>	<b>\$1,319</b>	--
	<i>West Lake Addition:</i>					
▪ Current	\$593	\$786	\$1,055	--	--	
▪ <b>Proposed</b>	<b>\$603</b>	<b>\$688</b>	<b>\$1,089</b>	--	--	
<b>AMP II</b>	<i>Dakota Park (Carrington Place)</i>	Based on the Low-Income Housing Tax Credit Rents as published				
<b>AMP III</b>	<i>Renaissance at Washington Ridge</i>	Based on the Low-Income Housing Tax Credit Rents as published				
<b>AMP IV</b>	<i>Hampton Hills: Section 32 Homeownership Program</i>					
	▪ Current	--	--	\$781	\$951	--
	▪ <b>Proposed</b>	--	--	<b>\$813</b>	<b>\$1,030</b>	--
<b>AMP V</b>	<i>Micro-Cottages at Williamstown</i>					
	▪ Current	--	--	--	--	--
	▪ <b>Proposed</b>	<b>\$487</b>	<b>\$644</b>	--	--	--



**HOUSING AUTHORITY  
OF THE CITY OF LAKE LAND, FLORIDA**

**FAMILY SELF SUFFICIENCY**

**ACTION PLAN**

**2019**

**HOUSING AUTHORITY OF THE CITY OF LAKELAND, FLORIDA  
FAMILY SELF SUFFICIENCY  
ACTION PLAN**

**INTRODUCTION**

The Lakeland Housing Authority (LHA) is the quasi-government agency created for the oversight of HUD funding included, but not limited to PH/HCV programs. LHA has approximately 453 public housing units located on eight (7) housing complexes.

LHA's Section 8 is responsible for (1,218 HCV & 25 Mainstream Disable Vouchers). Individuals being assisted through both the Public Housing and Section 8 HCV program have been determined eligible to receive housing assistance based on income, family size, disability or age qualifications and other criteria in accordance with LHA's Admissions and Continued Occupancy Policy & Administrative Plan.

Family Self Sufficiency (FSS) Availability

At the present time the number of mandatory Section 8 slots has been reduced from Eighty-eight (88) although HUD allows the mandatory slots to be reduced each time an FSS successfully completes the program. LHA's has opted to continue using the original number of slots (88). The LHA Board of Commissioners has authorized One Hundred (100) Public Housing FSS slots (not HUD mandated). The Public Housing slots can be increased based on available funding and an exhibited need. The criteria established for participation in the FSS program will be the same for all participants. Anyone interested in participating in the FSS program may volunteer to do so.

Goals

The primary goal of the FSS Program is that participating families achieve social and economic independence by receiving necessary training and that all individuals in the household who are able become gainfully employed. Each family should be free from any dependence on public assistance programs. A secondary goal to be discussed with each family is home ownership.

Documents

Several documents, which are required by HUD to be kept on file, identify the screening and program oversight procedures, which assist in creating an environment to actively communicate with each resident to assure every opportunity for the success of reaching goals of economic independence.

- The **Instructions for Executing the Contract of Participation** will set forth the instructions established by HUD and identifies the responsibilities and obligations on the part of the resident and the LHA. (Exhibit A)
- The **Contract of Participation** will set forth the provisions established by HUD and identifies the responsibilities and obligations on the part of the resident and the LHA. (Exhibit B-form **HUD-52650**)

- The **Individual Training and Services Plan (ITSP)** includes interim and long term goals, objectives and a time frame specifically designed for each resident and his/her family. In addition the ITSP will list the resources and available supportive services for each family. (Exhibit C)
- The **LHA Family Self-Sufficiency Program FSS Escrow Account Credit Worksheet** (Exhibit D1) used to illustrate the **HUD Family Self-Sufficiency Program FSS Escrow Account Credit Worksheet** calculation process (Exhibit D2-form **HUD-52652**)

#### Family Self-Sufficiency Program Coordinating Committee

An advisory group composed of local professionals and residents will oversee the activities and resident involvement in the FSS Program. The composition of the advisory group will be representative of resources for the residents in the areas of employment and education barriers, social needs and other potential growth and development phases of economic self-sufficiency. Representatives may include (but will not be limited to) educators, bankers with knowledge of personal credit areas and mortgage loans, community action agency staff, transportation disadvantaged, law enforcement staff, housing authority staff, residents, health care providers, ministers, job training and vocational rehabilitation, child care providers, vocational rehabilitation and/or private employers.

The committee will assist in assessing potential participants, reviewing individual progress reports, determining successful completion status and advising staff on potential supportive services and job placements. They will also be asked to make recommendations about potential changes that could enhance the FSS program and its relationship to other LHA programs.

#### Staffing

The Family Self-Sufficiency Coordinators will oversee the activities of the FSS programs for both PH & HCV. The individuals conducting orientation and re-certification workshops for both Public Housing and Section 8 will work to recruit new participants and make time available for the appropriate staff person (or participant) to make a presentation about the FSS program.

### **PARTICIPANT RECRUITMENT**

#### Printed Materials

The FSS program is desirable to a variety of individuals receiving housing assistance from the LHA. Residents at various stages of training and/or an employment status have extremely diverse reasons for wanting to participate in the FSS program. All possible sources for public notification and on-going recruitment will be used. These will include (but not be limited to) flyers distributed to residents during orientation, door to door delivery, newsletters, posting at manager's offices and reception areas, utility payments made to residents and resident meetings. In addition, an annual mailing to all housing assistance recipients will be made to reinforce the availability of this program. All public recruitment notices for new residents will also include mention of the FSS Program. Whenever it is possible the local media will be used to recognize successful participants.

### Staff Outreach

Public Housing Managers approach each resident about the FSS program at the time notice is given of any change in status (i.e., return to school, employment opportunities, changes in family composition).

### Other Agencies

As welfare reform has become more of a reality in Florida, the collaborative efforts by several agencies for the success of a family are on going. Opportunities to alert caseworkers from the Department of Children and Families, United Way, Jobs and Benefits, Polk Work One Stop Center, Vocational Training, Vocational Rehabilitation, WAGES, Head Start and other programs about the FSS opportunities are readily available. FSS is a viable component to enhance participation in any of the above-mentioned programs. The Lakeland Housing Authority is represented on the Polk County Workforce Development Board and will continue to be an active participant in Welfare Reform Programs in the area.

## **SCREENING AND SELECTION PROCEDURES**

Participation remains on a voluntary basis, program application forms are outlined in the attached copy of the FSS documents. Acceptance into the program will be based on availability of space and the reality of a resident achieving the determined goals established with the Resident Services Associates and the FSS Coordinator. Priority for participation will be determined on a first come first served basis. Each individual must be in good standing with the Lakeland Housing Authority and if applicable the Section 8 Landlord. In addition, individuals who are in academic or vocational training, unemployed and/or underemployed will be given priorities for vacant slots. Individuals who are college graduates with a marketable skill and who are gainfully employed will not be considered in need of the FSS program.

In the event that there are no vacant slots for Section 8 residents, a waiting list will be established. By quarterly review, inactive participants will be removed from the roster and those residents on the waiting list will be approached about participating in the program at the new date. In the event that there are no vacant slots for Public Housing residents and there are no inactive participants during a review process, additional slots will be requested from the board in increments of (ten) 10 slots at a time. The Board will determine the reasonableness of the request. The decision about the extra slots will be determined based on funding availability and demand.

To be determined active, each participant will be expected to attend resident and FSS meetings, mail monthly reports identifying education progress or employment training outcomes and have a contribution to an escrow account if employed. The head of household will have an ITSP on file and other adults in the household participating in the FSS program. Participants will act whenever possible as mentors for other residents.

The FSS Coordinator will give an orientation to each participant and will assist in developing a full ITSP including family barriers to employment. Youth in need of academic remediation, school dropouts, pregnant or parenting teens or any other status which may be causing the

resident to have employment barriers will be addressed. The family will be assisted in overcoming those barriers.

#### Instruction for Executing the Contract of Participation

See the attached Instruction for Executing the Contract of Participation and the Contract of Participation presently being used for FSS participants. (Exhibit A)

#### The Contract of Participation

See the attached Instruction for Executing the Contract of Participation and the Contract of Participation presently being used for FSS participants. (Exhibit B)

#### Individual Training and Services Plan

An ISTP has been designed for each client and will be reviewed with the FSS Coordinator on an annual basis or if the participant makes a request, more frequently. (Exhibit C)

### **INTEGRATION OF SERVICES**

The collaborative programs run by the Lakeland Housing Authority including an Office Skills Trainee Program, Traviss Technical Center, Healthy Families, Kid House, Computer Job Search Center are on-site activities that are currently in place. In addition, non financial agreements are in place with the Polk Workforce Development Board, Polk Work One Stop Center, United Way, Florida Department of Labor Jobs and Benefits to provide employment and training services to LHA residents.

### **SUPPORTIVE SERVICES**

All FSS participants when enrolled in employment and training activities will be assisted in utilizing local resources for child care, transportation, medical and dental services, clothing and other supportive services. Public Housing residents may be eligible for benefits available through available grants and all LHA residents will be assisted through all potential sources identified by the Resident Services Associates. Welfare reform identifies several transitional services as residents enter the workplace. On site training courses are Computer training, GED, FCAT, Job Search Center, and TABE testing.

## **SPECIAL PROGRAMS**

In addition to employment and training programs, FSS participants will be expected to participate in growth and development training opportunities to include but not be limited to:

- Budget Counseling and Credit
- Parenting and Family Planning
- Health Issues including substance abuse and sexually transmitted disease awareness
- Home Ownership Opportunities
- Decision Making and Conflict Resolution programs
- Citizenship and Volunteer Opportunities
- SHARE Food Program
- Home Maintenance and Repair

### On-Going Programs

Several agencies receive funding from a variety of sources to operate programs on public housing properties. Because of the demands placed on working parents by family members, FSS participants are encouraged to enroll dependents in after-school programs for literacy, recreation, health and social issues.

## **CAREER AND PERSONAL COUNSELING**

It is a goal of the FSS program to have each resident achieve social and economic independence by receiving necessary training and that all individuals in the household who are able become gainfully employed. To make the most effective use of funds and time available, each FSS participant will be directed to a compatible career path whenever possible. Through a process of combining local resources with the identified desires of the resident, the EDSS and HOPE VI staff will subjectively determine the assessment to be done on each eligible resident. Objective measurements will be conducted when determined necessary to identify academic and vocational skill levels, aptitude and ability for each person entering the workplace.

## **JOB DEVELOPMENT, TRAINING AND PLACEMENT**

The Lakeland Housing Authority is represented on the Polk Workforce Development Board by the membership of a Commissioner of the Authority. As part of this effort, LHA is committed to provide job placement and training for all residents including FSS participants. The FSS Coordinators and Resident Services Associates work to access local services to assist all eligible residents in overcoming personal and family barriers to employment.

These barriers may include but are not limited to the following:

Low Academic Levels:

In need of GED or HS Equivalency, School Dropout, Reading and Math below 8<sup>th</sup> grade level.

Non-English Speaking:

Incapable of reading or performing work related tasks in English

Low Vocational Skills:



No marketable ability or work history  
Physical or Mental Barrier:  
Receiving disability benefits or in the process of being determined eligible for benefits  
Need for supportive services such as transportation, childcare, clothing, etc.

## **WORK PLACEMENT**

Resident Services Associates are working by non-financial agreement with the Florida Department of Labor to assist all residents in subsidized housing through the Lakeland Housing Authority in finding meaningful employment. Access to the job bank information available at the Jobs and Benefits office has been arranged at the Washington Park Housing Complex in the Emma Mae Smith Turner Community Center. A Job Club is being conducted there on occasion. In addition, the WAGES and JTPA staffs are working with the residents eligible for those activities.

## **SUPPLEMENTARY EDUCATION**

As a result of WAGES, clients who may have once been eligible for JTPA are in some instances being sent into the workplace with very minimal job skills. The Resident Services Associates have been reviewing families enlist in the FSS, and other grant funded programs to assist in decision making about the appropriate use of available childcare funding and other supportive services which may assist eligible residents in returning to school to upgrade or gain much needed job skills training.

The Lakeland Housing Authority operates an office skills trainee program in conjunction with the WAGES program. Also, an adult education program offering GED preparation is conducted at the Westlake Community Center and Computer Courses.

Courses are available for tuition skills upgrade or academic remediation course that will make a difference in job placement.

## **TRANSPORTATION**

Public transportation and LHA transportation will be provided for FSS participants for training and other FSS related activities sponsor by LHA.

## **UNAVAILABILITY OF SUPPORTIVE SERVICES**

In some instances a resident may not be able to meet work related goals as a result of the unavailability of supportive services. If the FSS Coordinator determines with the resident that the need for supportive services is temporary, an extension to the time period for completion of the FSS program may be requested. If it is the recommendation of the FSS Coordinator that the client will not be able to complete the FSS Contract, the client may be released from the Contract.

## **SHORT AND LONG TERM GOALS**

Page one of each participant's Individual Training and Services Plan includes space for the final goal and an area to list the interim goals needed to achieve the final goal. (See Exhibit E) The additional pages provide a format for recording each interim goal and specific information related to its achievement. The participant and FSS Coordinator or another authorized LHA representative must sign the final page of each participant's plan.

Interim goals must be specified along with the activities and services needed to achieve them. For example, a single mother with two children who has an interim goal of completing her secondary education might require several different activities and services to achieve that goal. These could include transportation, tutoring, and/or childcare. One of the interim goals for families receiving welfare assistance is to become independent of welfare assistance for at least twelve (12) consecutive months before the end of the contract. Any Family that is receiving welfare assistance must have this included as an interim goal in the Head of the Family's Individual Training and Services Plan.

The final goal listed on the Individual Training and Services Plan of the Head of the Family must include getting and maintaining suitable employment specific to that individual's skills, education, job training, and the available job opportunities in the area.

### **General Short and Long Term FSS Family Goals Recommendation**

#### Monthly Reports

The family must submit a monthly report identifying the completion of goals and the employment status. (Exhibit E)

## ESCROW FUNDS ACCOUNT

The Lakeland Housing Authority will establish a single depository escrow account for all FSS families who have had an increase in earned income since the effective date of the Contract of Participation and are in compliance with all HUD rules and regulations. Earned income shall be income from wages, salaries, other employee compensation, and regular or special pay for a member in the armed forces, as well as, earnings from self-employment. These funds will be deposited in an interest bearing HUD approved investment. Investment interest shall be credited periodically, or annually to each participating family's FSS account with annual reports provided to FSS families.

The escrow credit for low-income families, whose incomes are between fifty and eighty percent of the area median income will be based on fifty percent of the median income limit. Escrow credit worksheets will be calculated at each interim or annual re-certification where there has been an increase in earned income since the effective date of the Contract of Participation.

A Section 8 FSS Family has successfully completed the FSS program whenever thirty percent (30%) of the family monthly-adjusted income equals or exceeds the Fair Market Rent (FMR) for the size of the unit and the area in which it is located. At such time the FSS family may receive escrow if no family member is receiving welfare assistance. A public housing FSS Family has successfully completed the FSS program whenever thirty percent (30%) of the family's monthly income equals or exceeds the Fair Market Rent (FMR) for the unit the family qualifies for or occupies, and when no family member receives welfare assistance. (HUD defines ceiling rent as "the amount the HA will require for a particular unit size. The HA determines the ceiling rent, which is similar to FMR used in the Section 8 Certificate program"). Families can receive the escrow credit fund if they are independent of welfare assistance for twelve consecutive months prior to the successful completion of the contract. In addition, the family must sign a statement attesting to this. The FSS Coordinator will verify information by telephone verification or written verification from the Department of Children and Families. The FSS program is graded yearly by the Section 8 Management Assets Program (SEMAP) indicator report from Public Housing Information System (PIC), and the percent of FSS enrollment and escrow account balance fund.

"Welfare assistance" means income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. The definition borrows from the Department of Health and Human Services' TANF definition of "assistance" and excludes nonrecurring short-term benefits designed to address individual crisis situations. For FSS purposes, the following do not constitute welfare assistance: food stamps; emergency rental and utilities assistance; and SSI, SSDI, and Social Security.

As a general rule LHA, at its sole option, can authorize a one time interim partial release of the escrow funds during the term of the Contract of Participation: when a minimum of one year of participation has passed, upon recommendation from the FSS Coordinator, when the family has fulfilled certain interim Contract goals, and needs a portion of the escrow and it is determined that the family needs the funds to successfully complete the contract. Considerations for escrow account expenditures may include homeownership, tuition or related training expenses, small business start up expenses, automobile purchase for work related activities, job training and/or

equipment and supplies. The amount of the request is limited to twenty percent (20%) per year of successful contract completion.

### **FSS PORTABILITY**

An FSS family must make a commitment to remain in a residence in the jurisdiction of the LHA for a minimum period of one (1) year from the date the FSS Contract is signed. If the family chooses to move to a new area after that time, a separate escrow account for the family will be established. All performance expectations are identified in the Contract of Participation.

### **REJECTION OF AN APPLICANT**

An applicant will not be accepted into the FSS program if one or more of the following conditions exist:

1. The applicant's income does not fall under Section 8 or Public Housing guidelines.
2. The applicant refuses to pay money owed to the Housing Agency.
3. The applicant is uncooperative during the interview process and/or behaves in a belligerent, abusive or irresponsible manner. This could include being chronically late for appointments and/or failing to participate in meetings.
4. The applicant appears to or is involved in criminal behavior and shows no indication towards rehabilitation.
5. The supportive services, which may be needed for the successful completion of interim and long-term goals, are not available.
6. The family was previously enrolled in FSS and successfully completed and received their final escrow disbursement or did not complete the contract and failed to be removed from the FSS program with the permission of the appropriate parties.

### **TERMINATIONS**

An FSS participating family may be terminated from the program for any of the following reasons:

1. The participating family fails to comply with the Contract of Participation and/or the Individual Training and Services Plan.
2. The participant voluntarily withdraws from the FSS program for personal reasons.
3. The participant withdraws or is asked to leave by mutual consent of all parties.
4. The Contract of Participation and/or any extensions expire.
5. The participant or family member commits fraud, any criminal activity or a violation of the LHA lease that cannot be corrected.
6. The participating family is deemed to be acting in a manner that is inconsistent with any aspect of the FSS program and the purpose of the program.

### **APPEALS**

The family who is either rejected from participating or terminated from the program has the right to request an appeal through the following process within ten (10) working days of the rejection

or termination. Send a letter to the FSS Coordinator or the Executive Director it will be reviewed by the Program Coordinating Committee. The Program Coordinating Committee will make a final determination. If at any time, the family status changes that the family believes it may be eligible for participation in the FSS program, the family may reapply.

## **EXIT INTERVIEWS**

Exit interviews will be conducted through a survey or personal contact with each out-going participant who successfully completes the program for the purpose of increasing the capabilities of the program. All FSS "Alumni" will be encouraged to volunteer for resident committees and other functions in which they will have invaluable contributions to the success of on-going programs. Miscellaneous recruitment information will be reviewed by the Alumni to help with communication with residents.

## **EXHIBIT A**

### **Instruction for Executing the Contract of Participation**

U.S. Department of Housing and Urban Development  
Section 8, Public Housing and Indian Housing Programs  
**FAMILY SELF-SUFFICIENCY PROGRAM**

Page \_\_\_\_ of \_\_\_\_

**Instructions for Executing the Contract of Participation**

**Parties to the Contract/Signatures**

- The Head of the participating Family must be the adult member of the Family who is the Head of the household for income eligibility and rent purposes.

**Term of Contract**

- The effective date is the first day of the month following the date the contract was signed by the Family and the LHA Representative
- The expiration day is five years from the effective date of the contract.
- If the LHA decides to extend the term of the contract, the original expiration date listed on page one of the contract must be crossed out and the new expiration date added. Initial all changes.
- If a Family moves under Section 8 portability procedures and is going to participate in the receiving Housing Authority's FSS program, the effective date of the contract between the Family and the receiving Housing Authority is the first day of the month following the date the contract was signed by the Family and the Housing Authority's Representative. The expiration date of the contract between the receiving Housing Authority and the Family must be the same as the expiration date of the contract between the LHA and the Family.

**FSS Escrow Account**

- The income and rent numbers to be inserted in Section V of the Contract may be taken from the amounts on the last reexamination or interim determination before the Family's initial participation in the FSS program, unless more than 120 days will pass between the effective date of the reexamination and the effective date of the contract of participation. If it has been more than 120 days, the LHA must conduct a new reexamination or interim redetermination.
- If a Family moves under Section 8 portability procedures and is going to participate in the receiving Housing Authority's FSS program, the receiving Housing Authority must use the amounts listed for annual income, earned income, and Family rent shown in Section V of the contract between LHA and the Family.

## **Changes to the Contract**

- This contract of participation can only be changed to modify the contract term, the Head of the Family, or the Individual Training and Services Plans.
- Any change of the Head of the Family under the contract must be included as an attachment to the contract. The attachment must contain the name of the new designated Head of the Family, the signatures of the new Head of the Family, an LHA representative, and the date signed.
- Any change(s) to an Individual Training and Services Plan must be included as a revision to the Individual Training and Services Plan (attachment) to which the change applies. The revision must include the item changed, signatures of the participant and an LHA representative, and the date signed.
- For extensions to the contract term, see the "Term of Contract" section.
- If, twelve months after the effective date of the contract, a Family in the Section 8 FSS program moves outside of the LHA jurisdiction, under Section 8 portability procedures, the LHA may take one of the following actions.
  1. The LHA may permit the Family to continue to participate in its FSS program, if the Family demonstrates to the LHA's satisfaction that it can meet the Family responsibilities of the contract in the new location. In this case, the existing contract remains in effect with no change. The LHA must transfer the Family's FSS escrow account balance when the receiving Housing Authority absorbs the Family.
  2. The receiving Housing Authority may permit the Family to participate in its FSS program. If so, the LHA must terminate its contract with the Family. The LHA must also transfer the Family's FSS escrow account balance when the receiving Housing Authority absorbs the Family. The receiving Housing Authority will execute a new contract with the Family.
  3. In cases where the Family cannot fulfill its Family obligations in the new location, and the receiving Housing Authority does not permit the Family to participate in its FSS program, the contract between the LHA and the Family shall terminate and the Family will lose the funds in its FSS escrow account.

## **Incentives**

- If a Housing Authority has chosen to offer incentives in connection with the FSS program, these incentives may be included in the Individual Training and Services Plan or as an attachment to the contract.



## Individual Training and Services Plans

- The contract must include an Individual Training and Services Plan for the Head of the Family. Other Family members age eighteen and older may choose to execute an Individual Training and Services Plan, if agreed to by the LHA.
- The resources and supportive services to be provided to each Family member must be listed in the Individual Training and Services Plans that become attachments to the contract of participation.
- Page one of each participant's Individual Training and Services Plan includes space for the final goal and an area to list the interim goals needed to achieve the final goal. The additional pages provide a format for recording each interim goal and specific information related to its achievement. The participant and LHA representative must sign the final page of each participant's plan.
- Interim goals must be specified along with the activities and services needed to achieve them. For example, a single mother with two children who has an interim goal of completing her secondary education might require several different activities and services to achieve that goal. These could include transportation, tutoring, and/or childcare.
- All completion dates included in the Individual Training and Services Plan must be on or before the contract of participation expires.
- One of the interim goals for families receiving welfare assistance is to become independent of welfare assistance for at least twelve (12) consecutive months before the end of the contract. Any Family that is receiving welfare assistance must have this included as an interim goal in the Head of the Family's Individual Training and Services Plan.
- The final goal listed on the Individual Training and Services Plan of the Head of the Family must include getting and maintaining suitable employment specific to that individual's skills, education, job training, and the available job opportunities in the area.
- The FSS Coordinator must determine if unavailable services are an integral part of the Family's progress or advancement towards self-sufficiency. If services are not integral to the Family's progress, the FSS Coordinator shall review the Individual Training and Services Plan to delete services and modify the contract to remove any obligations on the Family to accept unavailable services. If unavailable services are an integral component of success, the FSS Coordinator shall declare the contract null and void and reclassify the FSS Family as a non-FSS Family.

## **Short and Long Term FSS Family Goals**

### Years 1-2

- Vocational or education training
- Job training or employment for advancement
- Must be employed in a realistic field to progress or advance
- Must have actively sought employment and be able to verify that sincere efforts have been made to gain employment
- Must follow through with all referrals for employment

### Years 2-3

- Employment with potential for advancement
- Involvement in vocational or educational training for degree
- Must be near completion in education or vocational training
- Must have been employed during some part of this period or actively seeking employment
- Must have completed interim goals in the Individual Training and Services Plan

### Years 4-5

- Employed and working towards self-sufficiency
- Involved and near completing training
- Must actively seek employment and obtain employment upon completion of training
- Must be independent of Federal or State welfare assistance at least twelve (12) consecutive months prior to the contract expiring.
- Must have completed an Individual Training and Services Plan

## **EXHIBIT B**

### **The Contract of Participation**

## **EXHIBIT C**

### **Individual Training and Services Plan (ITSP)**

## **EXHIBIT D**

**HUD Family Self-Sufficiency Program  
FSS Escrow Account Credit Worksheet**  
(An illustration of the process. PHA may develop own)

**LHA Family Self-Sufficiency Program  
FSS Escrow Account Credit Worksheet**

# **EXHIBIT E**

## **Monthly Reporting Forms**

## **EXHIBIT F**

### **Miscellaneous Recruitment Information**

# Housing Authority City of Lakeland Limited English Proficiency (LEP) Plan

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It is the policy of Housing Authority City of Lakeland (LHA) to ensure that persons with Limited English Proficiency (LEP) are not discriminated against nor denied meaningful access to and participation in the programs and services provided by the Housing Authority. In order to ensure meaningful access and participation for LEP persons, LHA will notify such persons that language services are available to them at no cost and will take reasonable steps to see that language services are provided according to the provisions of LHA's Plan as described below.

The LEP Plan and Policies that follow will apply to all of Housing Authority City of Lakeland's programs, services and facilities.

It is the intent of Housing Authority City of Lakeland, in providing language services to LEP persons, to achieve a balance that ensures meaningful access to programs and services while not incurring undue burdens on LHA resources.

LHA has designated Carlos Pizarro as the LEP Coordinator. This employee will provide oversight for the implementation of the LEP Plan and Policies, coordinate and facilitate delivery of LEP language services, ensure that staff receives appropriate training on LEP Policies and Procedures, and direct the ongoing monitoring and periodic assessment of the LEP Plan and Policy's effectiveness.

## **Definitions**

**Limited English Proficiency Person.** Any person who does not speak English as their primary language and who has a limited ability to read, write, speak, or understand English. Such person or persons will be entitled to language assistance at no cost to themselves with respect to a particular type of service, benefit, or encounter.

**Vital Document.** Any document that contains information that is critical for obtaining or maintaining the services or benefits that are supported by Federal funds, or that are required by law. Such documents may include, but are not limited to, applications, consent forms, notices of participant rights and responsibilities, disciplinary notices, letters or notices that require a response from the participant or beneficiary, legal notices, and notices advising LEP persons of the availability of free language services

**Interpretation.** The act of listening to spoken words in one language (the source) or orally translating it into another language (the target).

**Translation.** The replacement of a written text from one language into an equivalent written text in another language. It is noted that some LEP persons cannot read in their own language and back up oral



interpretation services may be needed for written documents.

Four-Factor Assessment. This is an assessment tool used by the Recipient of federal funding to determine the extent of its obligation to provide LEP services. These four factors are: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided the program to people's lives; and (4) the resources available to the grantee / recipient and costs.

Who is Covered? HUD's regulations, 24CFR Part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development – Effectuation of Title VI of the Civil Rights Act of 1964," requires all recipients of federal financing assistance from HUD to provide meaningful access to LEP persons. Title VI of the Civil Right Act of 1964 prohibits discrimination on the basis of race, color or national origin. Because language, like culture, is so closely linked to national origin, HUD's final LEP guidance points out that "failure to ensure that LEP persons can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination."

Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the LEP Guidance of the Federal Register (FR-4878-N-01) are to additionally apply to programs and activities of federal agencies, including HUD. Federal financial assistance includes grants, training, and use of equipment, donations of surplus property, and other assistance.

Federal assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipients programs and activities. To do this, the recipient should: (1) conduct the four-factor assessment; (2) develop a language access plan (LAP); and provide appropriate language assistance. Recipients of HUD assistance include Public Housing Authorities.

Coverage under Title VI, Executive Order 13166, and HUD's regulations extends to a recipient's entire program or activity, (i.e., to all parts of a recipient's operations). This is true – even if only one part of the recipient receives the federal assistance.

### **Identification of LEP Persons Who Need Language Services Assistance**

The LHA will use the following methodology and data sources to identify and determine the number of LEP persons currently using the Housing Authority's services, the number of LEP persons in the Housing Authority's area of operations who may be eligible for programs and services and the particular languages used by both parties.

1. The LHA will use various methods to identify LEP persons with whom they have contact. These will include:
  - Current and past experiences with LEP persons encountered by staff. The number and

type of such encounters will be periodically tabulated and analyzed to determine the breadth and scope of the language services required. In this analysis, consideration will be given to minority language populations that are eligible, but may have been underserved because of existing language barriers. To facilitate these encounters, notices will be posted in the lobby of the main office. The posted notice will be in commonly encountered languages and should encourage LEP persons needing language assistance to self-identify.

- Self-Identification through the application form. The Housing Authority will document within the application form that the applicant has been informed of their right to language services at no cost, identify their primary language, and whether or not they would like an interpreter or prefer to receive documents translated into their primary language.
- The LHA is located in Polk County, FL. Based on data maintained by Polk County 21.1% of the people in Polk County, FL speak a non-English language. Spanish is the most common foreign language in Polk County and within the City of Lakeland.
- The LHA will continue to review data analyzed by Polk County. Data will also be reviewed from the Modern Language Association ([www.mla.org](http://www.mla.org)) regarding languages spoken in Polk County and the City of Lakeland as well as the ability to speak English “well” or “very well” as self-identified by speakers of various languages within the County. The Housing Authority may also utilize the Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance available at [www.lep.gov/selfassesstool.htm](http://www.lep.gov/selfassesstool.htm).

As part of the implementation of its LEP Plan the LHA will utilize information provided by applicants and current program participants on application and review documents and recorded in LHA electronic records to determine the types of languages used and the levels of proficiency with English for each household. In addition LHA will utilize data obtained during staff encounters at initial screening of applicants and at each annual review.

This information will be reviewed periodically to ensure that the LEP Plan addresses the language needs of persons served by the LHA.

#### **Frequency of Contact with LEP Persons**

The LHA will also provide language services in the conduct of its outreach efforts, which are intended to make the general public aware of its programs and services. In this manner, LEP persons who are a part of the population in the Housing Authority’s area of operations will have an equal opportunity to learn about the Housing Authority’s programs and services and to access and participate in them.

### **Nature and Importance of the Program or Services**

The LHA recognizes that, within the range of programs and services it provides, some programs and services are more important than others. While it is LHA's intent to provide meaningful access to all participants and eligible persons, the availability of resources may limit the provision of language services in some instances.

Activities such as outreach intake forms, leases, rules of occupancy, legal actions, life and safety notes, and the like have a high priority. Information about and an understanding of these activities such as recreation programs, social activities, optional meetings, and related areas are of a lesser importance and hence a lower priority. The LHA will develop a listing of all activities related to its programs and services and a matrix showing the relative importance of each. Based upon this analysis, LHA will determine how language services to LEP persons will be delivered for each activity.

### **Types of Language Services to Be Provided**

Based upon the number or proportion of LEP persons of various language groups served or encountered in the eligible population, the LHA will provide language services as indicated.

The LHA will provide language services to LEP persons by a variety of methods based upon the relative numbers of such persons and the frequency of contacts or anticipated contacts. Reasonable steps will be taken to accomplish this, but at a point at which costs approach or exceed the benefits, alternative methods of delivery of language services will be evaluated and appropriate changes made.

Based upon the number or proportion of LEP persons of various language groups served or encountered in the eligible population the LHA will provide language services as indicated below:

<b>Provision of Written Language</b>	<b>Language Groups</b>	<b>Determination</b>
Translate Vital Documents	Spanish	There is more than 5% of the eligible population or beneficiaries within the Housing Authority's jurisdiction.
Translated Written Notice of Right to Receive Free Oral Interpretation of Documents	Spanish	Based upon the Housing Authority's past experience with LEP persons encountered by LHA staff, this is the most common language for which interpretation is requested.
No Written Translation Required	All others	While no written translation is required for other languages under the LEP Plan, the Housing Authority will continue its practice of providing oral interpretation when requested by applicants / participants of its program

### **Procurement of Interpretation and Translation Services for LEP Persons**

The following methods of providing interpretation and translation services will be considered and used based upon the assessment of need for the Housing Authority:

1. Contracting with qualified interpreters and translators, either individually or through an organization which provides such persons when other Housing Authority employees are not available or not skilled (when accuracy and details are important or critical).
2. Centralizing language services and / or sharing language services with other Housing Authorities if / when available (useful to minimize costs).
3. Using telephone interpreter services (useful when prompt delivery of interpretation services is required.)
4. Pooling resources and / or standardization of documents and forms (useful to minimize costs).
5. Use of and / or hiring or training bilingual staff who handle the majority of the verbal and written translation duties for the Housing Authority (essential in the daily operations).
6. Using family members or friends (useful when language service needs are least important or informal).

The LHA will explore the most cost effective means of delivering competent language services before limiting services due to resource limitations or concerns. In the process of deciding which services will be provided, the Housing Authority will thoroughly document the process used in arriving at the determination of which services are to be provided to which groups. This documentation will be maintained in Housing Authority records to demonstrate compliance with the LEP Guidance issued by HUD.

### **Quality and Competency of Language Services**

The Housing Authority will make every reasonable effort to assure that the language services it provides to LEP persons are of the highest quality and that the competency of interpreters and translators is appropriate to the situation. This would, generally, be used outside of the use of internal bilingual employees.

1. Interpreters (outside the use of internal bilingual employees). Oral interpretation of encounters, interviews, meetings and the like require a certain level of competency and professionalism on the part of the interpreter. These characteristics do not necessarily exist in a person who is simply bilingual. Likewise, formal certification, while helpful, may not always be required. Often the importance of the encounter or the consequences will direct the level of professionalism needed. For example, a grievance hearing or court hearing regarding a lease termination may require an interpreter while a meeting at a resident's home about a minor neighborhood complaint may not.

When using an interpreter, the Housing Authority will use the following general criteria to ensure effective communications with LEP persons:

- a. Demonstrated proficiency in and ability to communicate information accurately in both English and in the other language, and able to identify and employ the appropriate mode of interpreting (consecutive, simultaneous, summarization, or sight translation).
- b. Knowledge in both languages of any specialized terms or concepts peculiar to the Housing Authority's program or services and of any particularized vocabulary and phraseology used by the LEP person.
- c. An understanding of and ability to follow confidentiality and impartiality rules to the same extent that the Housing Authority employee for whom they are interpreting or to the extent that their position requires or both.
- d. Understanding of and adherence to their role as interpreter without deviating into a role as a counselor, legal advisor, or other role.
- e. Awareness of regionalisms (dialects) used by the LEP persons for whom they are interpreting.
- f. Certification of interpreters' skills and abilities when individual rights depend upon precise interpretation.

When interpretation is necessary and reasonable it will be provided in a timely manner and in an appropriate place so as to avoid the effective denial of a benefit or service. The importance of the benefit or service to meaningful access to programs and services will dictate the urgency of providing the language service may be reasonably delayed.

- 2. Translators (outside the use of internal bilingual employees). When selecting translators, the list of criteria applied to determine competency and professionalism for interpreters above will be applied to the extent that those criteria are appropriate. Translation skills can be very different from those of interpretation. When vital documents are involved, the Housing Authority will use professional translators or translation associations.

#### **Documents Used by the Housing Authority**

The LHA will conduct an initial review of its written documents that are generally available to and used by the general public, applicants and residents for the purpose of assessing the importance of those documents to its clientele, including LEP persons. This analysis will be based upon HUD's "Four Factor Assessment" that is found in the notice regarding guidance on LEP persons. The four factors are:

- 1) The number or proportion of LEP persons encountered or eligible to be served
- 2) The frequency of contact
- 3) The nature of importance of the program or activity
- 4) The resources available to the LHA and the costs.

Based upon this analysis, a determination will be made as which documents will be translated and into

which languages. This may range from word for word translation of legal notices to the simple inclusion on other less important documents of a notice in various languages that translations or interpretations may be available upon reasonable request.

At a minimum, LHA will provide written translation of vital documents for LEP language groups that constitute 5% or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be encountered by the Housing Authority.

Translation of vital documents into other languages that do not meet this criterion may be provided orally if, and when, needed. If there are fewer than 50 persons in a language group that meets the 5% level, the LHA will not translate documents, but will instead provide a written notice in the appropriate language of the LEP group of the right to receive competent oral interpretation of the written materials free of cost.

### **Type and Frequency of Notice to LEP Persons**

The LHA will provide appropriate notice to LEP persons of the availability of free language services that ensure meaningful access to programs and services provided by the Housing Authority. Based upon the results of research into the language groups that are encountered in the LHA's area of operations, notices in those appropriate languages informing LEP persons and groups will be posted in common areas, offices and anywhere that applications are taken. These notices will explain how to receive language services.

Notices will be distributed to grass roots and other community based organizations informing LEP persons of the Housing Authority's programs and services and of the availability of free language services needed.

Telephone answering messages and voice mail menus will include brief notices in the most commonly used languages.

### **Training of Staff Persons**

The LHA will provide training to its staff in its LEP Plan and Policies. A determination of the frequency of staff encounters with LEP persons will dictate the level of detail of this training. Staff having the greatest contact will be trained to effectively implement the Plan and Policies through the use of standardized procedures. Those staff having the least amount of contact with LEP persons will, at a minimum, be trained to be fully aware of the Plan and Policies so that they may reinforce its importance and ensure implementation by other staff.

### **Monitoring, Compliance, Assessing Performance and Revisions**

The LHA will monitor implementation of the LEP Plan and Policies on an ongoing basis, making revisions to policies and procedures as may be required periodically. The LHA will also review on a periodic basis the overall effectiveness of its LEP Plan and Policy. This review will consider information from the following sources and criteria as well as other factors as may be appropriate:

1. Changes in demographics, including new language groups and changes in the proportion of existing language groups, types of services, and other needs.
2. Frequency of encounters with LEP persons.
3. Whether existing language services are meeting needs of LEP persons.
4. Availability of new resources, including technology.
5. Whether identified sources for assistance are still available and viable.
6. How well staff understand and have implemented the LEP Plan and Policies.
7. Feedback from the community at large and from minority language groups and persons.

Bases upon findings of the periodic review, the LHA will revise the LEP Plan and Policies to ensure its effectiveness in meeting the access and participation needs of LEP groups and persons.

Staff will document revisions to the LEP Plan and Policies as they are necessary and the reasons therefore.

Consistent with federal law, HUD and LHA policies “ no person will be discriminated against on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. This policy will continue to be communicated in English and languages appropriate to residents, applicants, staff and the public.

**NOTICE OF PUBLIC MEETINGS AND PUBLIC HEARING**  
**Lakeland Housing Authority**  
**FY 2019 Agency Plan**

The Lakeland Housing Authority (LHA) has scheduled two public meetings on its FY 2018 Agency Plan with the Resident Advisory Board and the general public at 8:30 a.m. on each July 24, 2018 and August 3, 2018 at the LHA Administrative Offices, 430 Hartsell Avenue, Lakeland.

**The Public Hearing is scheduled for July 24, 2018 at 8:30 a.m.**

**The Second and Final Public Hearing is scheduled for August 23, 2018 at 3 p.m.**

LHA has developed its Agency Plan in accordance with the Quality Housing and Work Responsibility Act of 1998 including, but not limited to, additional updates received from the Department of Housing and Urban Development.

The Agency Plan, Capital Funds and Replacement Housing Factor budgets and its attachments are available for review at the above address between the hours of 8:00 a.m. and 5:00 p.m., Monday through Thursday, beginning on June 19, 2018 and ending on August 1, 2018. The plan will be posted for 45 days. Inquiries and comments may be directed to Carlos Pizarro, Vice-president of Housing, at [cpizarro@lakelandhousing.org](mailto:cpizarro@lakelandhousing.org) and/or Valerie Brown, Vice-president of Administration, at [vbrown@lakelandhousing.org](mailto:vbrown@lakelandhousing.org) and/or Florida Relay services at 711 and/or by visiting: [www.LakelandHousing.org](http://www.LakelandHousing.org).

Copies of the Agency Plan will be also available for review at the following locations:

- City of Lakeland Community Redevelopment Agency--228 South Massachusetts Avenue, Lakeland, FL 33801
- All the properties and locations within the Lakeland Housing Authority portfolio.

The Housing Authority of the City of Lakeland dated June 19, 2018.

L2019 06/19; 2018-Public and Legal Notice





**AVISO DE REUNIONES PÚBLICAS Y AUDIENCIA PÚBLICA**  
**Autoridad de Vivienda de Lakeland (LHA)**  
**Plan de agencia Año Fiscal 2019**

La Autoridad de Vivienda de Lakeland (LHA) tiene programadas dos reuniones públicas en su año fiscal 2018 Agencia Plan con la Junta Asesora de residentes y público en general a 8:30 cada 24 de julio de 2018 y el 3 de agosto de 2018 en las oficinas administrativas de LHA, 430 Hartsell Avenue, Lakeland.

**La audiencia pública está prevista para el 24 de julio de 2018 en 8:30**

**La segunda y última audiencia pública está prevista para el 23 de agosto de 2018 a 15:00**

LHA ha desarrollado su Plan de agencia de acuerdo con viviendas de calidad y ley de responsabilidad del trabajo de 1998, incluyendo pero no limitado a, actualizaciones adicionales recibidas desde el Departamento de vivienda y desarrollo urbano.

Presupuestos del Plan de la Agencia, fondos de Capital y Factores de vivienda de reemplazo y sus accesorios están disponibles para revisión en la dirección antes mencionada entre el horario de 8:00 a 5:00 pm, de lunes a jueves, de 19 de junio de 2018 y el 01 de agosto de 2018. El plan será publicado durante 45 días. Consultas y comentarios se pueden dirigir a Carlos Pizarro, Vice-Presidente de la Vivienda, en [cpizarro@lakelandhousing.org](mailto:cpizarro@lakelandhousing.org) o Valerie Brown, Vice-Presidente de Administración, en [vbrown@lakelandhousing.org](mailto:vbrown@lakelandhousing.org) o servicios de retransmisión de Florida al 711 o visite: [www.LakelandHousing.org](http://www.LakelandHousing.org).

Copias del Plan de la agencia también estará disponibles para revisión en las siguientes ubicaciones:

- Ciudad de la Agencia de Redesarrollo de la comunidad de Lakeland--Massachusetts sur  
228 Avenue, Lakeland, FL 33801
- Todas las propiedades y ubicaciones dentro de la cartera de la autoridad de vivienda de Lakeland.

La autoridad de vivienda de la ciudad de Lakeland de fecha 19 de junio de 2018.

L2019 06/19; 2018-público y Legal aviso

**Certification by State or Local  
Official of PHA Plans Consistency  
with the Consolidated Plan or  
State Consolidated Plan  
(All PHAs)**

U. S Department of Housing and Urban Development

Office of Public and Indian Housing

OMB No. 2577-0226

Expires 2/29/2016

**Certification by State or Local Official of PHA Plans  
Consistency with the Consolidated Plan or State Consolidated Plan**

I, William "Bill" Mutz, the Mayor  
*Official's Name* *Official's Title*

certify that the 5-Year PHA Plan and/or Annual PHA Plan of the

Housing Authority of the City of Lakeland  
*PHA Name*

is consistent with the Consolidated Plan or State Consolidated Plan and the Analysis of  
Impediments (AI) to Fair Housing Choice of the

City of Lakeland  
*Local Jurisdiction Name*

pursuant to 24 CFR Part 91.

Provide a description of how the PHA Plan is consistent with the Consolidated Plan or State  
Consolidated Plan and the AI.

The PHA Plan outlines ways to create affordable rental housing and homeownership opportunities  
for moderate-, low- and very low-income families and individuals in a manner that is consistent  
with the goals and objectives of the 2015-2020 Consolidated Plan and 2015 Analysis of  
Impediments to Fair Housing as well as the efforts of the Affordable Housing Advisory Committee  
for the City of Lakeland which reviews the local affordable housing policies.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official

William "Bill" Mutz

Signature

Title

Mayor

Date

Sept. 5, 2018



**BOARD OF  
COMMISSIONERS**

Michael A. Pimentel  
Chairman

Rev. Richard Richardson  
Vice-Chairman

Eddie Hall  
Commissioner

Joseph DiCesare  
Commissioner

Lorenzo Robinson  
Commissioner

Shelly Asbury  
Commissioner

Dorothy Sanders  
Commissioner

Benjamin J. Stevenson  
Executive Director

430 Hartsell Ave  
Lakeland, FL 33815

**MAIN OFFICE**  
Phone: (863) 687-2911  
Fax: (863) 413-2976

[www.LakelandHousing.org](http://www.LakelandHousing.org)

September 4, 2018

The Honorable William "Bill" Mutz  
Mayor  
City of Lakeland  
228 S. Massachusetts Avenue  
Lakeland, FL 33801

RE: 2019 Annual Public Housing Authority Plan for the Lakeland Housing Authority

Dear Mayor Mutz:

As you may know, the Lakeland Housing Authority is preparing its Annual Public Housing Authority Plan (Plan) for submittal to the U.S. Department of Housing and Urban Development for the 2019 Fiscal Year. The Plan provides LHA's vision for public housing in Lakeland and is required to be consistent with the City of Lakeland Consolidate Plan for Affordable Housing. In that regard, please sign the attached certification. The request for the signature of the Mayor of the City of Lakeland is an annual request from LHA. The Plan is scheduled to be submitted by October 1, 2018. A copy of the Plan was given to the City of Lakeland Community Development Department staff.

If you have any questions, please give me a call at (863) 687-2911, x1021. Thank you for your support and consideration in this matter.

Sincerely,

Benjamin Stevenson  
Executive Director

Attachment(s)

**Certifications of Compliance with  
PHA Plans and Related Regulations  
(Standard, Troubled, HCV-Only, and  
High Performer PHAs)**

**U.S. Department of Housing and Urban Development**  
Office of Public and Indian Housing  
**OMB No. 2577-0226**  
**Expires 02/29/2016**

**PHA Certifications of Compliance with the PHA Plan and Related Regulations including  
Required Civil Rights Certifications**

*Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official if there is no Board of Commissioners, I approve the submission of the \_\_\_ 5-Year and/or ~~XX~~ Annual PHA Plan for the PHA fiscal year beginning January 1, 2019, hereinafter referred to as "the Plan", of which this document is a part and make the following certifications and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the Plan and implementation thereof:*

1. The Plan is consistent with the applicable comprehensive housing affordability strategy (or any plan incorporating such strategy) for the jurisdiction in which the PHA is located.
2. The Plan contains a certification by the appropriate State or local officials that the Plan is consistent with the applicable Consolidated Plan, which includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice, for the PHA's jurisdiction and a description of the manner in which the PHA Plan is consistent with the applicable Consolidated Plan.
3. The PHA has established a Resident Advisory Board or Boards, the membership of which represents the residents assisted by the PHA, consulted with this Resident Advisory Board or Boards in developing the Plan, including any changes or revisions to the policies and programs identified in the Plan before they were implemented, and considered the recommendations of the RAB (24 CFR 903.13). The PHA has included in the Plan submission a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the Plan addresses these recommendations.
4. The PHA made the proposed Plan and all information relevant to the public hearing available for public inspection at least 45 days before the hearing, published a notice that a hearing would be held and conducted a hearing to discuss the Plan and invited public comment.
5. The PHA certifies that it will carry out the Plan in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990.
6. The PHA will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those programs, addressing those impediments in a reasonable fashion in view of the resources available and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.
7. For PHA Plans that includes a policy for site based waiting lists:
  - The PHA regularly submits required data to HUD's 50058 PIC/IMS Module in an accurate, complete and timely manner (as specified in PIH Notice 2010-25);
  - The system of site-based waiting lists provides for full disclosure to each applicant in the selection of the development in which to reside, including basic information about available sites; and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types at each site;
  - Adoption of a site-based waiting list would not violate any court order or settlement agreement or be inconsistent with a pending complaint brought by HUD;
  - The PHA shall take reasonable measures to assure that such a waiting list is consistent with affirmatively furthering fair housing;
  - The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications, as specified in 24 CFR part 903.7(c)(1).
8. The PHA will comply with the prohibitions against discrimination on the basis of age pursuant to the Age Discrimination Act of 1975.
9. The PHA will comply with the Architectural Barriers Act of 1968 and 24 CFR Part 41, Policies and Procedures for the Enforcement of Standards and Requirements for Accessibility by the Physically Handicapped.
10. The PHA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, Employment Opportunities for Low-or Very-Low Income Persons, and with its implementing regulation at 24 CFR Part 135.
11. The PHA will comply with acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and implementing regulations at 49 CFR Part 24 as applicable.

12. The PHA will take appropriate affirmative action to award contracts to minority and women's business enterprises under 24 CFR 5.105(a).
13. The PHA will provide the responsible entity or HUD any documentation that the responsible entity or HUD needs to carry out its review under the National Environmental Policy Act and other related authorities in accordance with 24 CFR Part 58 or Part 50, respectively.
14. With respect to public housing the PHA will comply with Davis-Bacon or HUD determined wage rate requirements under Section 12 of the United States Housing Act of 1937 and the Contract Work Hours and Safety Standards Act.
15. The PHA will keep records in accordance with 24 CFR 85.20 and facilitate an effective audit to determine compliance with program requirements.
16. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.
17. The PHA will comply with the policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments), 2 CFR Part 225, and 24 CFR Part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments).
18. The PHA will undertake only activities and programs covered by the Plan in a manner consistent with its Plan and will utilize covered grant funds only for activities that are approvable under the regulations and included in its Plan.
19. All attachments to the Plan have been and will continue to be available at all times and all locations that the PHA Plan is available for public inspection. All required supporting documents have been made available for public inspection along with the Plan and additional requirements at the primary business office of the PHA and at all other times and locations identified by the PHA in its PHA Plan and will continue to be made available at least at the primary business office of the PHA.
22. The PHA certifies that it is in compliance with applicable Federal statutory and regulatory requirements, including the Declaration of Trust(s).

The Housing Authority of the City of Lakeland

FL011

\_\_\_\_\_  
PHA Name

\_\_\_\_\_  
PHA Number/HA Code

XX Annual PHA Plan for Fiscal Year 2019

\_\_\_\_\_ 5-Year PHA Plan for Fiscal Years 20\_\_\_\_ - 20\_\_\_\_\_

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802).

Name of Authorized Official  Benjamin Stevenson	Title  Executive Director
Signature	Date

**Civil Rights Certification**  
*(Qualified PHAs)*

U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0226  
Expires 02/29/2016

**Civil Rights Certification**

**Annual Certification and Board Resolution**

*Acting on behalf of the Board of Commissioners of the Public Housing Agency (PHA) listed below, as its Chairman or other authorized PHA official, I approve the submission of the 5-Year PHA Plan for the PHA of which this document is a part, and make the following certification and agreements with the Department of Housing and Urban Development (HUD) in connection with the submission of the public housing program of the agency and implementation thereof:*

The PHA certifies that it will carry out the public housing program of the agency in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990, and will affirmatively further fair housing by examining their programs or proposed programs, identifying any impediments to fair housing choice within those program, addressing those impediments in a reasonable fashion in view of the resources available and working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement and by maintaining records reflecting these analyses and actions.

The Housing Authority of the City of Lakeland

FL011

\_\_\_\_\_  
PHA Name

\_\_\_\_\_  
PHA Number/HA Code

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. **Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official: Michael Pimentel

Title: Chairman

Signature

Date