

# HOUSING CHOICE VOUCHER PROGRAM

## Administrative Plan

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**ORANGE COUNTY  
HOUSING DEPARTMENT**



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# CHAPTER 1 OVERVIEW

## A. The Public Housing Authority (PHA)

## B. The Housing Choice Voucher (HCV) Program

## C. The HCV Administrative Plan

### **A. THE PUBLIC HOUSING AUTHORITY (PHA)**

#### ***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 Orange County Housing Authority for the jurisdiction of the City of Hillsborough / County of Orange County.

The Public Housing Authority (PHA) receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development (HUD). OCHA is not a federal department or agency. A 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 (ACC) 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.

OCHA is governed by the OCHA Advisory Board. Board members 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 OCHA conducts business, ensuring that policies are followed by PHA staff and ensuring that OCHA 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 OCHA is the executive director, hired and appointed by the board of commissioners. The 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.

### ***PHA Mission, Commitment To Ethics And Service***

#### **OCHA Policy**

**MISSION STATEMENT:** The Orange County Housing Authority's mission is to provide safe, decent and sanitary housing conditions for very low-income families and to manage resources efficiently. OCHA promotes personal, economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

- 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.
- 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.
- 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.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.

*The Administrative Plan is laid out to present federal regulations along with local Orange County additions to the federal guidelines. Throughout the document, the federal regulations are presented first, and local additions and clarifications are designated by a blue box titled "OCHA Policy."*

- Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the PHA's mission.
- 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.

OCHA 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.

## B. THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

### *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.

### *The HCV Partnerships*

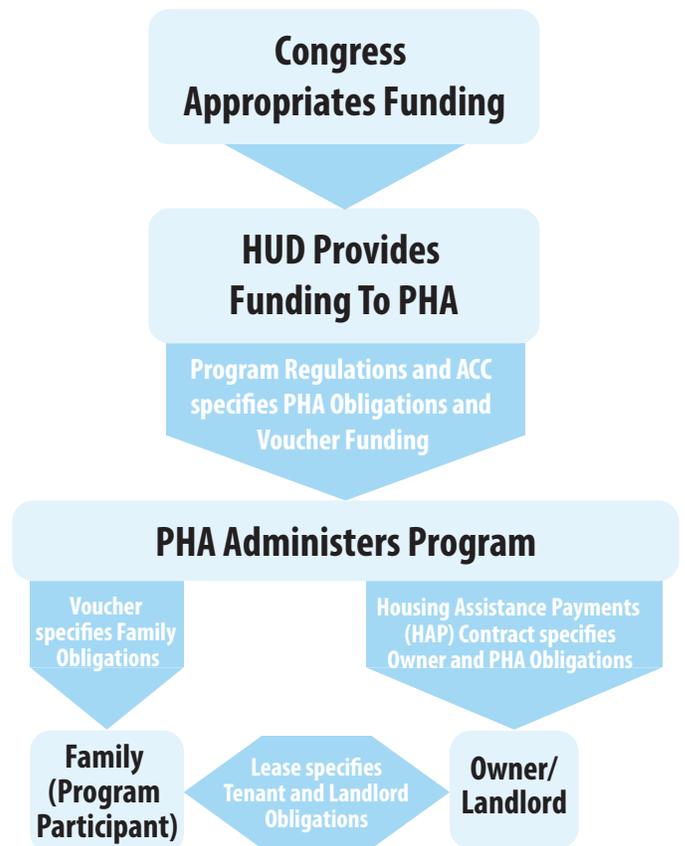
To administer the HCV program, the PHA enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). The PHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

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.

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and asset in Sections 102 and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the Federal Register on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule.

The following chart illustrates key aspects of these relationships.



### The HCV Relationships:

#### 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.

### 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.

### 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.

### What Does the Participant Do?

- The family has the following responsibilities:
  - Provide the PHA with complete and accurate information;
  - Notify the PHA of any changes in family composition or income;
  - Respond to OCHA communications in a timely manner;
  - Allow the PHA to inspect the unit at reasonable times and after reasonable notice, as required of the PHA by HUD;
  - Take responsibility for any Housing Quality Standards (HQS) violations caused by the participant;
  - Comply with the terms of the lease with the owner;
  - Comply with the family obligations of the voucher;
  - 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;

## 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 100: The Fair Housing Act
- 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)

## C. THE HCV ADMINISTRATIVE PLAN

### 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.

### 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.

### 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.

#### OCHA Policy

To reflect changes in regulations, OCHA operations, or when needed to ensure staff consistency in operation, OCHA will revise this administrative plan as needed. OCHA will review the plan at least once a year. This plan was last revised Spring 2023.

# CHAPTER 2

## FAIR HOUSING AND EQUAL OPPORTUNITY

### A. Nondiscrimination

### B. Persons With Disabilities

### C. Persons With Limited English Proficiency (LEP)

## A. NONDISCRIMINATION

### 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.



### **Nondiscrimination**

Federal regulations prohibit discrimination against certain protected classes and other groups of people. 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].

### **OCHA Policy**

OCHA does not identify any additional protected classes. OCHA will not:

- 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 (HCV) 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

### 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.

### 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]

### OCHA Policy

OCHA refers all potential Fair Housing complaints to the Orange County Fair Housing program, which completes assessment and investigation according to federal regulations.

## B. PERSONS WITH DISABILITIES

### 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. For definitions of terms please refer to Exhibit 2.1 in the Exhibits.

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.

### OCHA Policy

OCHA 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:

*"OCHA is very willing and able to make reasonable accommodations. If you or anyone in your family has a disability, and you require a specific accommodation to fully utilize our programs and services, please contact us."*

A specific name and phone number of designated staff will be provided to process requests for accommodation. OCHA will display posters and other housing information and signage in locations throughout the OCHA office in such a manner as to be easily readable from a wheelchair.

For a definition of "person with disabilities," see Exhibit 2.1 in the Exhibits.

### 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.

## 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

## 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 participant will be asked to 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 will be asked to explain the relationship between the requested accommodation and the disability. HUD requires there to be an identifiable connection, or nexus, between the requested accommodation and the individual's disability.

### OCHA Policy

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



## Verification Of Disability

Before providing an accommodation, OCHA will 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 OCHA'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 participant 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 will 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].

### ***Approval/Denial Of A Requested Accommodation***

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.

#### **OCHA Policy**

After a request for an accommodation is presented, OCHA will respond, in writing, within ten (10) calendar days.

If OCHA denies a request for an accommodation, OCHA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to OCHA program, and without imposing an undue financial and administrative burden.

### ***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.

#### **OCHA 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 OCHA staff, one-on-one assistance will be provided upon request.

OCHA staff may also suggest 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.

### ***Physical Accessibility***

The PHA will 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.

### ***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 an informal review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review 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.



## **C. PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

### ***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 people with LEP 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. Persons with Limited English Proficiency (LEP) 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 administrative plan, people with 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 people with LEP, the PHA will balance the following four factors: (1) the number or proportion of people with LEP eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which people with LEP 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 people with LEP to critical services while not imposing undue burdens on the PHA.

## Oral Interpretation And Written Translation

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

### OCHA Policy

OCHA will utilize a language line for telephone interpreter services.

Where people with LEP 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 OCHA. The interpreter may be a family member or friend.

OCHA will analyze the various kinds of contacts it has with the public, to assess language needs and decide what reasonable steps should be taken. OCHA will prioritize training and hiring bilingual staff to be available to act as interpreters and translators, and will pool resources with other PHAs.



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

### OCHA Policy

OCHA will provide written translations of vital documents whenever needed. Translation of other documents, if needed, can be provided orally.

# CHAPTER 3

## ELIGIBILITY

### A. Definitions Of Family And Household Members

#### B. Basic Eligibility Criteria

#### C. Denial Of Assistance

### 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.

## A. DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

### FAMILY AND HOUSEHOLD

The terms *family* and *household* have different meanings in the HCV program, as discussed in 24 CFR 982.201(C); FR Notice 02/03/12 and PIH Notice 2014-20.

#### 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.

#### OCHA 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 OCHA if the family's composition changes.

The addition of a new family member is limited to birth, adoption, court-awarded custody, legal guardianship, marriage, civil union, domestic partnership, reasonable accommodation, or elderly member of the immediate family.

## 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.

### OCHA Policy

This document primarily uses "participant" to refer to "family" and "household."

## CHANGES IN FAMILY COMPOSITION

### Family Breakup [24 CFR 982.315; Notice PIH 2017-08]

According to 24 CFR 982.315 and PIH Notice 2017-08, when there are changes in family composition the PHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. The following exceptions apply:

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 assaults, and stalking, see Section 16.H of this plan.)

In accordance with Notice PIH 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD–VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator's HUD–VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD–VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

### OCHA Policy

When a family on the waiting list changes into two otherwise eligible families, both families will be granted the opportunity to apply for a voucher upon being pulled from the waitlist.

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

If OCHA does not have sufficient vouchers to issue to both family members and must make a determination on which to assist, the following factors will be considered:

1. The presence of a judicial decision or agreement among original family members

2. The interest of any minor children, including custody arrangements;
3. The interest of any ill, elderly, or disabled family members;
4. 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;
5. Any possible risks to family members as a result of criminal activity; and
6. The recommendations of social service professionals

## Remaining Member of a Tenant Family

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 (24 CFR 5.403).

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.A, for the policy on "Caretakers for a Child."

## HEAD OF HOUSEHOLD

According to 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 cohead or spouse.

### OCHA 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.

## ***SPOUSE, COHEAD, AND OTHER ADULT***

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

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

### **OCHA 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 *cohead* 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 cohead.

### **OCHA Policy**

Minors who are emancipated under state law may be designated as a cohead.

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

## ***DEPENDENTS AND MINORS***

A *minor* is a member of the family, other than the head of family or spouse, who is under 18 years of age.

According to 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, cohead, 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.

### **Joint Custody of Dependents**

#### **OCHA 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, OCHA 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.

## ***FULL-TIME STUDENT***

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 (24 CFR 5.603; HCV GB, P. 5-29).

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or cohead, 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.

## ***ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY***

The following definitions derive from 24 CFR 5.100 and 5.403, 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, cohead, 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.

## ***PERSONS WITH DISABILITIES AND DISABLED FAMILY***

The following definitions derive from 24 CFR 5.403 and FR Notice 02/03/12.

## Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead 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 document. 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.

## 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 C of this chapter, or from terminating assistance in accordance with the policies in Chapter 12.

## GUESTS

According to 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.

### OCHA Policy

OCHA will defer to individual lease requirements regarding guests. If the participant amends their lease to add a household member they should communicate that change to OCHA in accordance with program rules regarding changes in family composition.

## FOSTER CHILDREN AND FOSTER ADULTS

A **foster adult** is a member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition, and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

A **foster child** is a member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

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].

### OCHA 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.

It should be noted that if a head of household designates an individual as a foster child/adult, OCHA will not consider the foster child/adult a family member for purposes of program administration, even though such individual may be related by blood or marriage to a head of household or other family members. This is to clarify confusion among program participants. A head of household must choose one designation for such an individual (foster child/adult or family member), and cannot receive the benefits of both designations at the same time.

Foster child/adult, even if such individual is related by blood or marriage, will not qualify as a remaining family member for eligibility to obtain the voucher.

Children that are temporarily absent from the home as a result of placement in foster care are discussed below.

## 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.

### Definitions of Temporarily and Permanently Absent

#### OCHA 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, at which point OCHA staff will change the household composition.

Exceptions to this policy include victims of domestic violence, sexual violence, dating violence, or stalking who are absent for more than 180 days. Such victims may still be considered a family member based on documentation that the victim is expected to return to the family in a reasonable time.

Additional exceptions to the general policy related to absences are discussed below.



## Absent Students

### OCHA 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 OCHA indicating that the student has established a separate household or the family declares that the student has established a separate household.

### OCHA Policy

OCHA will request verification of the family member's permanent absence from a medical professional. If the family certifies that the family member is confined on a permanent basis, they may present, and OCHA will consider, any additional documentation or evidence.

## 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).

### OCHA Policy

If the family head, spouse, or cohead receives verification that the child has been permanently removed from the home, the assisted family should supply the information to OCHA in accordance with agreed-upon program rules and obligations.

## Return of Permanently Absent Family Members

### OCHA Policy

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

## Absent Head, Spouse, or Cohead

### OCHA 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.

## 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:

- 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 [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.

## 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].



### OCHA Policy

To request a live-in aide, participants should contact OCHA. OCHA staff will verify that the live-in aide is essential by obtaining written verification from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker.

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.

As with any other adult household member, HUD requires OCHA to perform a background check on any live-in aide. In the following circumstances, live-in aides will be denied[24 CFR 982.316(b)]:

- The person has been charged with producing methamphetamine on federal property;
- The person is on the lifetime sexual offender registry; 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.

OCHA will notify the family of its decision in writing within ten (10) calendar days of receiving a request for a live-in aide, including all required documentation related to the request.

## B. BASIC ELIGIBILITY CRITERIA

### INCOME ELIGIBILITY AND TARGETING 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.

(AMI) [24 CFR 5.603(b)].

#### Definitions of the Income Limits

**Low-income family.** A family whose annual income does not exceed 80 percent of the AMI

**Very low-income family.** A family whose annual income does not exceed 50 percent of the AMI.

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

#### Using Income Limits for Eligibility

Income limits are used for eligibility only at admission, 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 very low income** (annual income not exceeding 50% AMI) (24 CFR 982.201):

Other specific low-income families (80% AMI or lower) are eligible, although these cases are uncommon:

- 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]
- 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.

## OCHA Policy

OCHA has established the additional category of eligible low-income families (80% AMI or below) currently experiencing chronic homelessness, as defined in section 401(9) of the McKinney-Vento Homeless Assistance Act [42 U.S.C. 11360(9)]

## Using Income Limits for Targeting

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 (24 CFR 982.201).

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.

## CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

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 (24 CFR 5, SUBPART E).

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.

## Declaration

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 (24 CFR 5.508).

## 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.

## OCHA Policy

Family members who declare citizenship or national status will not be required to provide additional documentation.

## 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].

## 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.

## 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.

## Ineligible Families

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), 24 CFR 5.514(d), (e), and (f)].

## Timeframe for Determination of Citizenship Status

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 [24 CFR 5.508(g)].

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 thirty (30) days [24 CFR 5.508(h)].

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

## SOCIAL SECURITY NUMBERS

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. A detailed discussion of acceptable documentation is provided in Chapter 7 (24 CFR 5.216 AND 5.218, NOTICE PIH 2012-10).

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.

When the 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 a 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 a 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.

The PHA is required to grant the participant an additional 90 calendar day period to comply with the requirement 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 is required to be counted as part of the assisted household.

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.

### OCHA Policy

While OCHA is awaiting disclosure and documentation of the SSN, the child will be counted as part of the assisted household. During this time OCHA will generate an ALT ID for the child in the Public and Indian Housing Information Center (PIC). The ALT ID will be deleted within 30 calendar days of receipt of the SSN.

If a participant or any member of the household has been assigned a new SSN, it must be submitted at the time of receipt of the SSN, at the next interim or annual reexamination or recertification, or at an earlier time specified by the PHA, along with the documentation necessary for verification in order for the participant to remain eligible.

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.

## FAMILY CONSENT TO RELEASE OF INFORMATION

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 (24 CFR 5.230; HCV GB, p. 5-13).

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)].

## STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

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 (FR Notice 4/10/06, FR Notice 9/21/16).

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.

### 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.



### OCHA Policy

For any student who is subject to the 5.612 restrictions, OCHA 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 OCHA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, OCHA will send a notice of denial in accordance with the policies in Section 3.C, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16.C.

### Determining Parental Income Eligibility

#### OCHA 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, OCHA will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together, OCHA will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, OCHA will obtain an income declaration and certification of income from that parent.

- If the student’s parents are divorced or separated, OCHA 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, OCHA 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. OCHA 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, OCHA will use the income limits for the jurisdiction in which the parents live.

## Definitions

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions [FR Notice 4/10/06, FR Notice 9/21/16]. For full definitions and explanation, please refer to Exhibit 3.2 in the Exhibits.

### 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.

### Independent Student

#### OCHA Policy

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; and/or
- Is a person with disabilities and was receiving assistance under Section 8 of the 1837 Act as Of November 30, 2005.
- 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.

If OCHA determines that an individual meets the definition of a vulnerable youth such a determination is all that is necessary to determine that the person is an independent student for the purposes of using only the student’s income for determining eligibility for assistance.

OCHA will verify that a student meets the above criteria in accordance with the policies in Section 7.B.

### 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 in Exhibits).

### Parents

#### OCHA 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.).

### 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 in Exhibits).

### Veteran

#### OCHA Policy

A *veteran* is a person who served any amount of time in any branch of the armed forces with any discharge status.



## EMERGENCY HOUSING VOUCHERS

### Introduction and Goals

Emergency Housing Vouchers (EHV) is a temporary program developed by HUD in spring of 2021 to issue vouchers to the most vulnerable populations in a given community. The PHA has the following goals and standards of success in administering the program:

- Ensuring that EHV's are distributed proportionally and equitably to reflect the demographics of people experiencing homelessness in Orange County
- Ensuring that all recipients possess the knowledge of local resources to reduce the likelihood of returning to homelessness
- To ensure that the service fees associated with each voucher are used to 1) support the stability of the participants' housing to the greatest possible degree, and 2) assure them a dignified living space.

### Populations eligible for EHV assistance

#### *Homeless Category 1 – Literally Homeless*

Individual or household who lacks a fixed, regular, and adequate nighttime residence, meaning:

- a. Has a primary nighttime residence that is a public or private place not meant for human habitation
- b. Is living in a publicly or private operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid by charitable organizations or by federal, state and local government programs); or
- c. Is exiting an institution where (s) he resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution

#### *Homeless Category 2 – Imminent Risk of Homelessness*

Individual or household who will imminently lose their primary nighttime residence, provided that;

- a. Residence will be lost within 14 days of the date of application for homeless assistance;
- b. No subsequent residence has been identified; and
- c. The individual or household lacks the resources or support networks needed to obtain other permanent housing

## Vulnerable Youth

### OCHA Policy

A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
  1. A local educational agency homeless liaison
  2. The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
  3. A financial aid administrator

### **Homeless Category 3 – Homeless under other Federal statutes**

Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

- a. Are defined as homeless under the other listed federal statutes;
- b. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
- c. Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; and
- d. Can be expected to continue in such status for an extended period time due to special needs or barriers

### **Homeless Category 4 – Fleeing/Attempting to Flee Domestic Violence**

Any individual or household who:

- a. Is fleeing, or is attempting to flee, domestic violence
- b. Has no other residence; and
- c. Lacks the resources or support networks to obtain other permanent housing

### **Orange County Rapid Re-housing Program Participant**

An applicant who is a participant in the Orange County Rapid Re-housing Program, administered by Orange County Housing Department and Orange County Partnership to End Homelessness (OCPEH).

### **Move On Program**

An applicant who is referred through Orange County Partnership to End Homelessness' Move On Program. The applicants must be referred by an approved Move On participating program agency to include having a signed MOU with the Orange County Partnership to End Homelessness.

### **Services to be provided to eligible EHV families**

1. Partnering service providers will support individuals and families in completing applications and obtaining necessary supporting documentation to support referrals and applications for assistance; while aiding households in addressing housing barriers.
2. Partnering service providers will support PHAs in ensuring appointment notifications to eligible individuals and families and will assist eligible households in getting to meetings with the PHA.
3. PHAs will establish windows of time for EHV applicants to complete intake interviews for EHV.
4. Partnering service providers will provide culturally relevant housing search assistance for eligible individuals and families

5. Partnering service providers will provide counseling on compliance with rental lease requirements.
6. Partnering service providers will ensure people who need assistance with security deposits, utility hook-up fees, utility deposits, etc. are connected to relevant resources.
7. Partnering service providers will assess and refer individuals and families to benefits and supportive services, where applicable.
8. Partnering service providers will ensure services are culturally relevant and tailored to individual needs, language needs are accommodated, preferences are taken into account, and people are in the driver's seat of their own housing and services plan.

### **PHA Roles and Responsibilities**

1. Coordinate and consult with the CoC in developing the services and assistance to be offered under the EHV services fee.
2. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry System, the HOME Committee.
3. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner.
4. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner.
5. Identify a process to ensure equity is a primary focus of EHV efforts and continuous improvement processes are built in that ensure frequent monitoring of data and outcomes against local equity priorities.

### **Applications, Briefings, Verifications, Inspections, and Leasing**

Applications, briefings, verification, inspections, and leasing will follow all standard procedures as laid out in chapters 4-9 of the Administrative Plan. Additionally, they will employ all waivers currently being utilized under COVID protocols (e.g. income verification, citizenship documentation, voucher extension, etc.).

### **Services Fee (SF)**

HUD has allocated a one-time SF of up to \$3,500.00 per participant to support its efforts in implementing and operating an effective EHV services program that will best address the needs of EHV eligible individuals and families that successfully enter into a HAP Contract and lease. The SF will be paid to the owner or retailer upon receipt of an itemized invoice for applicable activities.

Note: For Owner incentive and/or retention payments, the PHA will pay the applicable amounts directly to the Owner/Agent. Examples of these activities include:



## C. DENIAL OF ASSISTANCE

### OVERVIEW

HUD requires that a family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance.

### Forms of Denial

Denial of assistance includes any of the following [24 CFR 982.552(a) (2); HCV GB, p. 5-35]:

- 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

### Prohibited Reasons for Denial of Program Assistance

HUD rules prohibit denial of program assistance to the program based on any of the following criteria [24 CFR 982.202(b), 24 CFR 5.2005(b)]:

- 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.C.)

- Security Deposit/Utility Deposit/Rental Application/Holding Fee/Renter's Insurance.
- Owner-related uses.
  - Owner recruitment and outreach.
  - Owner incentive and/or retention payments.
- Other eligible uses.
  - **Moving expenses (including move-in fees and deposits).** The PHA will provide assistance for some or all of the family's reasonable moving expenses when they initially lease a unit with the EHV. The PHA will not provide moving expenses assistance for subsequent moves unless the family is required to move for reasons other than something the family did or failed to do (e.g., the PHA is terminating the HAP contract because the owner did not fulfill the owner responsibilities under the HAP contract or the owner is refusing to offer the family the opportunity to enter a new lease after the initial lease term, as opposed to the family choosing to terminate the tenancy in order to move to another unit), or a family has to move due to domestic violence, dating violence, sexual assault, or stalking, for example.
  - **Essential household items.** The PHA will use the SF funding to assist the family with some or all of the costs of acquiring essential household items as defined by the PHA (e.g., furniture, tableware, bedding, etc.).



## **MANDATORY DENIAL OF ASSISTANCE**

HUD requires the PHA to deny assistance in the following cases [24 CFR 982.553(A)]:

- 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).

### **OCHA Policy**

- OCHA 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 household member who engaged in the criminal activity has completed a supervised drug rehabilitation program, or
  - The person who committed the crime is no longer living in the household.
  - Any member of the family fails to sign and submit consent forms for obtaining information.
  - The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

## **RESTRICTION ON ASSISTANCE BASED ON ASSETS**

There are two circumstances under which a family is ineligible to receive assistance based on asset ownership. (24 CFR 5.618)

First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).

Second, the family has real property (as defined under state law in which the property is located) that is suitable for occupancy by the family as a residence and the family has:

- A present ownership interest in the real property; and
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

The PHA does not have the discretion not to enforce or provide limited enforcement of the asset limitation at admission. However, the real property restriction does not apply in the following circumstances:

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
  - When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA must comply with all the confidentiality requirements under VAWA. The PHA must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered suitable for occupancy unless the family demonstrates that it:

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

### **OCHA Policy**

The PHA defines not sufficient for the size of the family as being overcrowded based on space standards in Chapter 8 of this policy.

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

## OCHA Policy

In general, the PHA defines a geographic hardship to include when a family members' work, school, health care provider, or other necessary service is located an unreasonable distance from the real property or there is a lack of adequate transportation options for the family to access work, school, health care, or other necessary services. The PHA will consider circumstantial details a family faces when determining whether a geographical hardship is present.

- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

If a family meets one of the above exceptions, the real property is not automatically excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets as described in 24 CFR 5.603 and Chapter 6 of this policy, it will be included in net family assets. If the value of that real property brings the net family assets above \$100,000 (as adjusted for inflation), the family is out of compliance with the asset limitation.

See Chapter 7 for information on verifying net family assets for purposes of the asset limitation.

## 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.

### Criminal Activity

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 (24 CFR 982.553).

## OCHA Policy

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.C. Upon consideration of such factors, the PHA may, on a case-by-case basis, decide not to deny assistance.

## Previous Behavior in Assisted Housing

HUD authorizes the PHA to deny assistance based on the family's previous behavior in assisted housing [24 CFR 982.552(C)].

Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

## OCHA Policy

OCHA may deny assistance to an applicant family if:

- The family does not provide complete and true information to OCHA.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.
  - **Abusive or violent behavior** towards OCHA 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, OCHA will consider the factors discussed in Section 3.C. Upon consideration of such factors, OCHA may, on a case-by-case basis, decide not to deny assistance.

## SCREENING

### 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].

#### OCHA Policy

OCHA will use the Dru Sjodin 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)].

### Screening for Suitability as a Tenant

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 (24 CFR 982.307).

#### OCHA Policy

OCHA 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)].

#### OCHA Policy

OCHA 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. OCHA will not provide any additional information to the owner, such as tenancy history or criminal history, etc.

## CRITERIA FOR DENIAL OF ASSISTANCE

### Consideration of Circumstances

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.C) [24 CFR 982.552(c)(2)].

#### OCHA Policy

OCHA understands that the effects of the U.S. criminal justice system are experienced disproportionately by Black people and other People of Color (POC). As such, a record of arrest will not be used as a basis for denial.

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property. OCHA 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
- Whether the person charged with the crime is a minor or a person with disabilities, or (as discussed further in Section 3.C) 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

### 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)].

### Reasonable Accommodation

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 [24 CFR 982.552(c)(2)(iv)].

### NOTICE OF ELIGIBILITY OR DENIAL

If the family 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.

#### OCHA Policy

The family will be notified of a decision to deny assistance in writing within ten (10) calendar 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)].

#### OCHA Policy

The family will be given fourteen (14) calendar days to dispute the accuracy and relevance of the information. If the family does not contact OCHA to dispute the information within that fourteen 14-day period, OCHA 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.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.C.

### ***PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING***

The Violence against Women Act of 2013 (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 or as a direct result of the fact 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.H of this plan, 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 VAWA Notice of Occupancy Rights (form HUD- 5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

#### OCHA Policy

OCHA acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have significant barriers to housing entry (e.g., credit history, rental history, a record of previous damage to an apartment, a prior arrest record). OCHA will consider these barriers when presented with any potential grounds for denial.

# CHAPTER 4

## APPLICATIONS, WAITING LIST AND TENANT SELECTION

### A. The Application Process

### B. Managing The Waiting List

### C. Selection For HCV Assistance

## 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.

## A. APPLICATION PROCESS

### APPLYING FOR ASSISTANCE

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 (HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36).



### OCHA Policy

After OCHA announces the opening of the waiting list (as outlined in Section 4.B), families may apply for assistance under the HCV Program by submitting a completed "pre-application".

OCHA only accepts pre-applications to the waiting list when it is "open". There are however certain situations where OCHA will accept pre-applications when the waiting list is "closed". These exceptions apply to families applying under the following programs: HUD special admissions, targeted funding, project-based assistance, and preference categories if applicable.

Applying to the OCHA waitlist is a two-step process:

#### Step 1 – Family Submits Completed Pre-Application:

Families apply to the OCHA waitlist by completing and submitting a pre-application. Families may obtain pre-application forms from OCHA's office during normal business hours, or on the department website. Families may also request by telephone, mail or email that an application be mailed to them.

Completed applications can be returned to OCHA in person or by mail, email or fax. Note: OCHA staff will assist anyone needing any help, for example by entering information received into the system on their behalf.

## Step 2 – OCHA Determines the Family’s Placement on Waiting List:

Families will be placed on the waiting list based upon a randomly assigned number, date and time or the priority of their preference category (if applicable).

## ACCESSIBILITY OF THE PRE-APPLICATION PROCESS

### People who are Elderly or Disabled[]

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 pre-application-taking facility and the pre-application process must be fully accessible, or the PHA must provide an alternate approach that provides full access to the pre-application process. Chapter 2 provides a full discussion of the PHA’s policies related to providing reasonable accommodations for people with disabilities (24 CFR 8 and HCV GB, pp. 4-11 – 4-13).

### Limited English Proficiency

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).

## PLACEMENT ON THE WAITING LIST

The PHA must review each complete pre-application received and make a preliminary assessment of the family’s eligibility. The PHA must accept pre-applications from families for whom the list is open unless there is good cause for not accepting the pre-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)].

### OCHA Policy

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.

OCHA may use a lottery system or date and time to assign families to its waiting list. Families will be randomly assigned a number

or given a date and time which in turn will be used to determine where they are placed on the waiting list. The only exception to the lottery or date and time method of assigning families to the waiting list applies to those who qualify under the following programs:

- HUD special admissions;
- Targeted funding; and
- OCHA’s preference categories, if applicable.

These particular families will be assigned to the waiting list according to the established priority of their preference category rather than a randomly assigned number or by date and time order

## Ineligible for Placement on the Waiting List

### OCHA Policy

If OCHA 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, OCHA will send written notification of the ineligibility determination within ten (10) 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).

## Selection from the Waiting List

### OCHA Policy

OCHA will notify the family via Email and/or mail when they are selected from the waiting list. At this time OCHA will inform them of next steps in completing an initial application for assistance. This information will enable OCHA to determine the family’s eligibility and level of assistance to be offered.

## B. MANAGING THE WAITING LIST

### 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.

### ORGANIZATION OF THE WAITING LIST

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 [24 CFR 982.204 and 205].

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

- Applicant name;
- Family unit size;
- Assigned lottery number, if applicable
- Date and time of application, if applicable
- Qualification for any local preference;
- Email address; and
- Racial or ethnic designation of the head of household.

HUD requires the PHA to 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.

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, property-based voucher or moderate rehabilitation program the PHA operates if: 1) the other programs' waiting lists are open, and 2) the family qualifies for the other programs.

### OPENING AND CLOSING THE WAITING LIST

#### 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 (24 CFR 982.206).

#### OCHA Policy

Before announcing reopening, OCHA will discuss the opening dates with partner agencies through the Orange County Partnership to End Homelessness (OCPEH). OCHA will announce the reopening of the waiting list at least thirty (30) calendar 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.

#### 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.

## OCHA Policy

Should the waitlist be open, OCHA will close the waiting list for new HCV applicants as prescribed in the current notice of opening. Where OCHA has particular preferences or funding criteria that require a specific category of family, OCHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

OCHA will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- Durham Herald
- News of Orange
- WCHL Radio
- Orange County social media accounts
- Orange County Housing providers

OCHA will also notify local housing and homeless service providers via the Continuum of Care (Orange County Partnership to End Homelessness) and the local Managed Care Organization (MCO), Alliance Health.

## FAMILY OUTREACH

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.C), 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

## OCHA Policy

OCHA is continually conducting outreach in collaboration with OCEPH. OCHA consults with OCEPH to provide program information and outreach to extremely low-income families.

## UPDATING THE WAITING LIST

HUD requires the PHA to establish policies to use when removing applicant names from the waiting list (24 CFR 982.204).

### 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)].

## OCHA Policy

To update the waiting list, OCHA will send an update request via first class mail or by Email 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.

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 thirty (30) days to respond from the date the letter was re-sent.

If OCHA does not get a response within 30 days, or has notice returned with no forwarding address, OCHA staff will attempt to contact family via all remaining contact methods on file, including phone, email and communication with service provider. Failing these attempts, the family will be removed from the waitlist.

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.

## Removal from the Waiting List

### OCHA Policy

If at any time an applicant family is on the waiting list, OCHA 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 OCHA 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 OCHA's decision (see Chapter 16) [24 CFR 982.201(f)].

## REPORTING CHANGES IN FAMILY CIRCUMSTANCES

### OCHA Policy

While the family is on the waiting list, the family must inform OCHA within a reasonable time of any changes in contact information, including current residence, mailing address, Email address, and phone number. The changes must be submitted to OCHA in writing or by Email. All applicants have the responsibility to maintain the accuracy of their personal information provided on their application. Failure to do so may result in OCHA removing the family from the waiting list if the family does not respond to notices such as those for selection, purging, and updating the waiting list.



## C. SELECTION FOR HCV ASSISTANCE

### 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)].

### SELECTION AND HCV FUNDING SOURCES

#### Special Admissions

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 (24 CFR 982.203).

#### Targeted Funding

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.C [24 CFR 982.204(e)].

## OCHA Policy

OCHA administers the following types of targeted funding which are not subject to selection from the OCHA waiting list:

- **HUD-Veterans Affairs Supportive Housing (HUD-VASH) Program** – selections based on referrals by participating Veterans Administration Office.
- **Foster Youth to Independence (FYI) Program:** selections based on referrals by participating department of social services
- **Emergency Housing Voucher (EHV) Program:** selections based on referrals by the Continuum of Care (OCPEH)
- Other programs designated under any new HUD awarded funding: OCHA will administer such programs in accordance with the HUD requirements.

OCHA will use the funds (including any renewal of such funds and new allocations of funds) that are provided by HUD only for the specific purposes identified above. In addition, when any targeted vouchers are returned by families, OCHA will only use that voucher for the same purpose.

## Regular HCV Funding

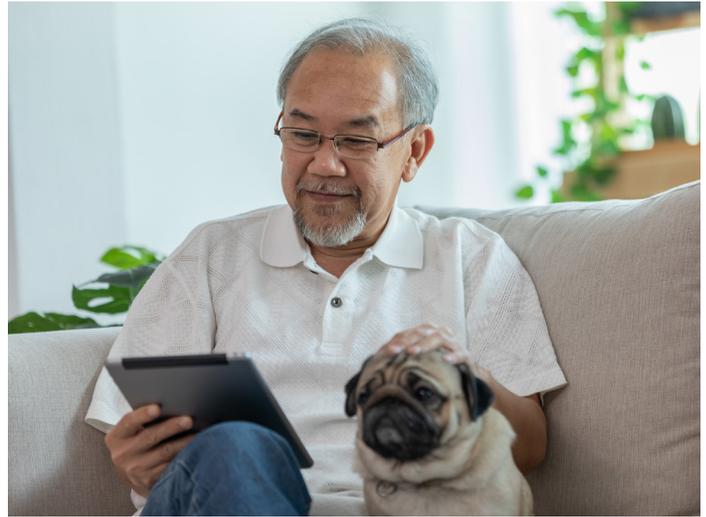
Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4.C.

## 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)].

## Local Preferences

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 (24 CFR 982.207; HCV p. 4-16).



## OCHA Policy

OCHA uses the following local preference system:

### Time on List:

- Date and time of receipt of a completed application.

### Residency Preference:

- For families who live, work, or have been hired to work in Orange County.

### Veteran Preference:

- A preference will be provided to applicants who served in the active military, naval, or air service of the United States who received other than a dishonorable discharge. This preference applies to veterans and the unmarried surviving spouses of veterans.

### People with Disabilities Preference:

- This preference is extended to people who are disabled or families with a member who is disabled as defined in this plan. Proof of disability will be required at time of selection (see Exhibit 3.1 in Exhibits).

### Age 62+ Preference:

- A preference will be provided to any family that includes a person 62 years or older.

### Families with Children Preference:

- A family with children is a household composed of at least one parent and at least one child under 18 years of age.

## Homeless Preference (based on federal definition of homelessness):

### Category 1 – Literally Homeless

- i. Individual or household who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - a. Has a primary nighttime residence that is a public or private place not meant for human habitation
  - b. Is living in a publicly or private operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid by charitable organizations or by federal, state and local government programs) ;or
  - c. Is exiting an institution where (s)he resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution

### Category 2 – Imminent Risk of Homelessness

- ii. Individual or household who will imminently lose their primary nighttime residence, provided that;
  - a. Residence will be lost within 14 days of the date of application for homeless assistance;
  - b. No subsequent residence has been identified; and
  - c. The individual or household lacks the resources or support networks needed to obtain other permanent housing

### Category 3 – Homeless under other Federal statutes

- iii. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - a. Are defined as homeless under the other listed federal statutes;
  - b. Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;
  - c. Have experienced persistent instability as measured by two moves or more during in the preceding 60 days; and
  - d. Can be expected to continue in such status for an extended period of time due to special needs or barriers

### Category 4 – Fleeing/Attempting to Flee Domestic Violence

- iv. Any individual or household who:
  - a. Is fleeing, or is attempting to flee, domestic violence
  - b. Has no other residence; and
  - c. Lacks the resources or support networks to obtain other permanent housing

#### Orange County Housing Help Program Participant Preference:

An applicant who is a participant in the Orange County Housing Help Rapid Re-housing Program, administered by Orange County Housing and Community Development and Orange County Partnership to End Homelessness (OCPEH).

#### Orange County HOME Committee Participant Preference:

An applicant experiencing homelessness who is referred through an agency participating in the OCPEH HOME Committee. The referring agency must be an active participant in the HOME Committee and be recommended for a HCV by HOME Committee members prior to HCV applications being accepted from agency referrals in this preference category.

#### Move On Program

An applicant who is referred through Orange County Partnership to End Homelessness' Move On Program. The applicants must be referred by an approved Move On participating program agency to include having a signed MOU with the Orange County Partnership to End Homelessness.

#### Involuntary Displacement Preference:

An applicant is or will be considered involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

- **Natural Disaster:** A disaster such as a fire, flood, earthquake or governmentally declared health pandemic that resulted in the inhabitability of the applicant's unit.
- **Victim of Hate Crime/Violent Crime:** Actual or threatened physical violence or intimidation directed against an applicant and his/her property that is based on the person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status

(AIDS/HIV status), or association with members of such protected classes, that is documented by law enforcement agency stating that the applicant is in an immediate life-threatening situation and that an immediate transfer would minimize the problem.

- **Government Action:** An action of a government agency related to code enforcement or public improvement or development.
- **Landlord Action:** An action by a housing owner that results in an applicant's having to vacate his or her unit, where the reason for the owner's action was beyond the applicant's ability to control or prevent, and despite the applicant having met all previously imposed conditions of occupancy, and the action is other than a rent increase.

### People Fleeing Domestic Violence

OCHA will offer a preference to families that include victims of domestic violence, dating violence, sexual assault, trafficking, or stalking who have either been referred by a partnering service agency or consortia.

### Youth Aging Out of Foster Care Age 18-24

The PHA will provide a preference to individuals who are at least 18 years of age and not more than 24 years of age who have left foster care within the twelve months of selection from the waiting list.

### Families with Children:

OCHA will provide a preference to families that include at least one minor child (individual under 18 years of age).

### Income Targeting Requirement

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 [24 CFR 982.201(b)(2)].

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)].



### OCHA Policy

OCHA 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.

### 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)].

### OCHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) points based on claimed preferences. Families with the most preference points will be selected first. Within each targeted funding or preference point group, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by OCHA.

Preferences	Points
Homeless (Categories 1-4)	100
Move on Program	100
Domestic/Interpersonal Violence	100
Foster Youth to Independence	50
Residency (resident of Orange County)	40
Elderly (62+ years)	15
People with Disabilities	15
Families with Children	15
Veterans	10
Involuntary Displacement	10
Time on Waitlist	Tiebreaker

## NOTIFICATION OF SELECTION

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

### OCHA Policy

OCHA will notify the family by mail or email upon selection from the waiting list. The notice will inform the family of the following:

- Steps required to complete application
- Date, time, and location of the scheduled initial application appointment, including any procedures for rescheduling;
- Who is required to attend the initial application appointment;
- Documents that must be provided to determine eligibility (according to Chapter 3)

If a notification letter is returned to OCHA with no forwarding address, OCHA staff will attempt to contact the participant via all remaining contact methods on file, including phone, email and communication with service provider. Failing these attempts, the participant will be removed from the waiting list, and 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 or email address.

## 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.

### OCHA Policy

OCHA does not require an application interview, but will provide one upon request.

## 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.

### OCHA Policy

OCHA will send a written *Notice of Ineligibility* within fourteen (14) calendar 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) otherwise the family will be removed from the waiting list. OCHA will follow up with all remaining contact methods on file before removal, including but not limited to email, contact with any service providers, inquiries about alternate language needs, etc.

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. OCHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If OCHA determines the family is *eligible* for assistance, OCHA will invite the family to attend a briefing in accordance with the policies in Chapter 5.

# CHAPTER 5

## BRIEFINGS AND VOUCHER ISSUANCE

### A. Briefings And Family Obligations

### B. Subsidy Standards And Voucher Issuance

#### INTRODUCTION

When a family is eligible for the HCV program, the PHA conducts an oral briefing and provides a briefing packet containing the HUD-required documents and other information the family needs for leasing a unit under the program. 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. Once the family is fully informed of the program's requirements, the PHA issues the family a voucher. The voucher includes the unit size, issue date and expiration date of the voucher.

#### A. BRIEFINGS AND FAMILY OBLIGATIONS

##### BRIEFING

24 CFR 982.301 lays out the regulations for briefings. Families may be briefed individually or in groups, and the PHA must ensure that the briefing is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

##### OCHA Policy

- Briefings may be conducted online.
- Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, OCHA may approve another adult family member to attend the briefing.
- OCHA staff can provide individual assistance as needed.
- Briefings will be conducted in English. For limited English proficient (LEP) applicants, OCHA will provide translation services in accordance with the PHA's LEP plan (See Chapter 2).

##### Notification and Attendance

##### OCHA Policy

OCHA will send families a notice of eligibility for assistance via mail and/or email. This notice will also include information about the briefing such as date/time and who is required to attend.



If the notice of eligibility is returned by the post office with no forwarding address, OCHA will mail a second notice to the same address; if the second 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.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. OCHA will work with applicants and/or service providers to find or create an appropriate briefing time.

##### Oral Briefing

According to 24 CFR 982.301(a), each briefing must provide information on the following subjects:

- How the HCV program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside OCHA's jurisdiction;
- An explanation of how an HCV participant can port their voucher to another PHA. OCHA may not discourage the family from choosing to live anywhere inside or outside OCHA jurisdiction. OCHA 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.

## Briefing Packet

According to 24 CFR 982.301(b), documents and information provided in the briefing packet must include the following:

- The term of the voucher, voucher extensions, and how to request an extension;
- How OCHA calculates housing assistance payments for a family, including how OCHA determines the payment standard, total tenant payment and maximum allowable rent for a family, and information on the payment standard and utility allowance schedule;
- An explanation of how an HCV participant can port their voucher to another PHA. OCHA may not discourage the family from choosing to live anywhere inside or outside OCHA jurisdiction. OCHA 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 HUD-required tenancy addendum, which must be included in the lease;
- The Request for Tenancy Approval form (RFTA), and a description of RFTA process;
- How and what participant information the PHA communicates with landlords;
- The PHA subsidy standards including when and how exceptions are made;
- Materials 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;
- Information on a participant's rights under VAWA, including the right to confidentiality and the exceptions;
- Information on available affordable housing units, including those accessible to people with disabilities, and other resources. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration;
- The family obligations under the program;
- The grounds on which OCHA may terminate assistance, as well as informal hearing procedures;
- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families;

## OCHA Policy

OCHA 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;
- The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking;
- Any other materials OCHA feels may be helpful to the long-term success of its participants.

## FAMILY OBLIGATIONS

Obligations of the family include family responsibilities as well as prohibited actions. OCHA must inform families of these obligations during the oral briefing, and in the briefing packet. The family must meet those obligations in order to continue participating in the program, as described in Chapter 12.

### Time Frames for Reporting Changes Required By Family Obligations

## OCHA Policy

OCHA staff request notification of household changes as soon as possible, within 30 calendar days at most and in writing. OCHA staff can assist families with providing written notice and documentation.

## Family Obligations

According to 24 CFR 982.552, the following rules apply to HCV participants:

- Supply requested information, including required evidence of citizenship or eligible immigration status, social security numbers, consent forms, and any other information used for regularly scheduled reexamination or interim reexamination.
- Provide true and complete information.
- Maintain the Housing Quality Standards (HQS) of the unit beyond normal wear and tear. Damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit.

- Allow OCHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- Abide by the terms of the lease.

### OCHA Policy

OCHA 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, violence, physical threats or intimidation, or extreme and intentional destruction of property. Other violations may be considered on a case-by-case basis. 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)].

- Examples of **extreme and intentional** property damage include ripping out wiring/piping, toppling appliances, and ripping out fixtures or doors.
- Damages such as a kitchen fire, broken appliances, and normal wear and tear (especially due to health equipment) will not generally be considered “extreme and intentional” property damage.
- **Violence, physical threats** or intimidation is defined as threatening or perpetrating violent or abusive behavior toward OCHA personnel, landlord or neighbors.
  - **Abusive or violent behavior** 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.
- Notify OCHA and the owner before moving out of the unit or terminating the lease, according to lease requirements. The family must promptly give OCHA a copy of any owner eviction notice;
- Occupy the assisted unit as their only residence;
- Notify OCHA about family composition and any changes, including the birth, adoption, or court-awarded custody of a child. The family must promptly notify the PHA in writing if any family member no longer lives in the unit;



### OCHA Policy

OCHA will determine eligibility of the new household member, including foster children and live-in aides, in accordance with the policies in Chapter 3.

- Refrain from subleasing the unit, assigning the lease, or transferring the unit;
- Supply any information requested by OCHA to verify that the family is living in the unit or information related to family absence from the unit;
- Notify OCHA when the family is absent from the unit;

### OCHA Policy

An extended period is defined as any period greater than ninety (90) calendar days.

- Pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease;
- 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);
- Refrain from fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information);
- Refrain from criminal activity, or use of drugs and alcohol that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises;

- Not receive another housing subsidy for the same unit or a different unit under any other federal, state or local housing assistance program;
- Not reside in a unit owned by a family member, unless OCHA 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;
- Maintain safe and non-threatening behavior with neighbors, landlords and OCHA staff.



## B. SUBSIDY STANDARDS AND VOUCHER ISSUANCE

### *DETERMINING FAMILY UNIT (VOUCHER) SIZE*

The following information is taken from 24 CFR 982.402. For each family, the PHA determines the appropriate number of bedrooms using the PHA subsidy standard and notes the family unit size on the participant's voucher. 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.

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 HQS.
- 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.

#### OCHA Policy

OCHA will assign one bedroom for the head of household and spouse or co-head and an additional bedroom for each person within the household. This subsidy standard will be used for all new admissions and for families that move or are transferred to another unit.

Current program participants will continue to have their assistance calculated based on the subsidy standards according to this Administrative Plan. However, any decrease in family composition that would result in a smaller unit size will be subject to the new subsidy standards at the family's next regular reexamination.

OCHA will assign one bedroom for each person within the household, except in the following circumstances:

- Live-in aides will be allocated a separate bedroom.

#### **EXCEPTIONS TO SUBSIDY STANDARDS**

In accordance with 24 CFR 982.402(b)(8), the PHA may grant an exception to its established subsidy standards. Reasons may include, but are not limited to:

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member's disability, medical or health condition

#### OCHA Policy

OCHA will consider granting an exception for reasonable accommodations, according to the procedure explained in Chapter 2. OCHA will re-verify the family's continued need for an additional bedroom at annual reexamination.

## VOUCHER ISSUANCE

The following refers to 24 CFR 982.302. 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.

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 voucher (form HUD-52646). For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The PHA can issue a voucher only after it has verified family eligibility [24 CFR 982.201(e)], and after the family has attended an oral briefing [HCV 8-1].

### OCHA Policy

OCHA will determine a family's program eligibility based on the information received during the sixty (60) calendar day period prior to the voucher being issued.

## VOUCHER TERM AND EXTENSIONS

### Voucher Term

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)].

### OCHA Policy

The initial voucher term will be 180 calendar days.

The family must submit a *Request for Tenancy Approval* within the 180-day period unless the OCHA grants an extension.

### Extensions of Voucher Term [24 CFR 982.303(b)]

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)].

### OCHA Policy

OCHA will approve one 90-day extension upon request from the family

Requests for voucher extensions should be submitted to OCHA by writing or phone, by the participant or their service provider, prior to the expiration date of the voucher.

OCHA will either approve or deny an extension request within fourteen (14) calendar days of the date the request is received, and will immediately provide the family written notice of its decision.

If an applicant submits an RFTA before the expiration of the voucher term that subsequently expires while OCHA is processing it, OCHA will consider the voucher to still be valid.

### Suspensions of Voucher Term

According to 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 PHA notifies the family in writing whether the request has been approved or denied.

### Expiration of Voucher Term

Once a family's HCV 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].

### OCHA Policy

OCHA staff will attempt to contact family via all contact methods on file, including phone, email and communication with service provider, for a period of thirty (30) days. Failing these attempts, the family's voucher will be considered expired.

# CHAPTER 6

## INCOME AND SUBSIDY DETERMINATIONS

### A. Annual Income

### B. Assets

### C. Adjusted Income

### D. Calculating Family Share and PHA Subsidy

## 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 (24 CFR Part 5, Subparts E and F; 24 CFR 982):

#### **A: Annual Income.**

HUD regulations specify the sources of income which are excluded from the family's annual income. These requirements and PHA policies for calculating annual income are found in Part I.

#### **B: Assets.**

HUD regulations specify the types of assets which are excluded from a family's annual income. These requirements and PHA policies for calculating income from assets are found in Part II.

#### **C: 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 and allow the PHA to adopt additional permissive deductions. These requirements and PHA policies for calculating adjusted income are found in Part III.

#### **D: 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.



## A: ANNUAL INCOME

### OVERVIEW

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources (other than those specifically excluded in 24 CFR 5.609(b)) by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income (other than those sources specifically excluded in 24 CFR 5.609(b)) by or on behalf of each dependent who is under 18 years of age; and
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but did not receive. For

example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. However, when a family member’s wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, the PHA must use the gross amount of the income, prior to the reduction, to determine a family’s annual income [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations 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 Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-2)
- The Effect of Welfare Benefit Reduction (Exhibit 6-3)

Sections 6-l.B and 6-l.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. Verification requirements for annual income are discussed in Chapter 7.

## HOUSEHOLD COMPOSITION AND INCOME

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)].  All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)].  All sources of unearned income, except those specifically excluded by the regulations, are included.

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 in accordance with HUD regulations and PHA policies in Chapter 11. 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

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.

#### OCHA Policy

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

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

#### OCHA 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.

### Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

#### OCHA 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 continue to be counted as a family member.

## Absent Head, Spouse, or Cohead

### OCHA 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.

## 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].

### OCHA Policy

The PHA 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.

## Joint Custody of Dependents

### OCHA 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, school records, or an IRS return showing which family has claimed the child for income tax purposes.



## Caretakers for a Child

### OCHA 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.

## CALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

### Anticipating Annual Income [24 CFR 5.609(c)(1)]

At initial occupancy and for an interim reexamination of family income, the PHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date. Policies related to verifying income are found in Chapter 7.

#### OCHA Policy

When the PHA cannot readily anticipate income based upon current circumstances (e.g., in the case of temporary, sporadic, or variable employment, 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.

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.

#### Known Changes in Income

If the PHA verifies an upcoming increase or decrease in income at admission or interim reexamination, annual income will be projected 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 new admission or interim 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, should the change in income require the PHA to conduct an interim reexamination, conduct an interim reexamination in accordance with OCHA Policy in Chapter 11.

## Calculating Annual Income at Annual Reexamination

At annual reexamination, except where the PHA uses a streamlined income determination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with PHA policies in Chapter 11 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11 [24 CFR.609(c)(2); Notice PIH 2023-27].

## EARNED INCOME

### Wages and Related Compensation

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b) (24)].

*Earned income* means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)]. Income earned as a day laborer is not considered nonrecurring income.

A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27]. Income earned as a seasonal worker is not considered nonrecurring income.

### OCHA Policy

The PHA will include in annual income the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, the PHA will verify and then average amounts received for the two years preceding admission or interim 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.

### Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

### Earnings of a Minor

A minor is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors is not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(b)(3)].

### Earned Income of Full-Time Students

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(b)(14)].

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. 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].

## EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the PHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27].

### 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 their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

### 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.

### OCHA 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.

### OCHA 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. The EID will sunset on January 1, 2026. In no circumstances will a family member’s exclusion period continue past January 1, 2026.

## BUSINESS AND SELF-EMPLOYMENT INCOME

Annual income includes “net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses [24 CFR 5.609(b)(28); Notice PIH 2023-27].

Expenditures for business expansion or amortization of capital indebtedness may 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.”

### OCHA 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 herein.

### Independent Contractors

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)]. This may include individuals such as third-party delivery and transportation service providers and “gig workers” like babysitters, landscapers, rideshare drivers, and house cleaners. Income earned as an independent contractor is not considered nonrecurring income.

### Business Expansion

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion.

### OCHA 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 the PHA to deduct from gross income the amortization of capital indebtedness.

### OCHA 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.

### 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 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.

### OCHA 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.

## Co-owned Businesses

### OCHA 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.

## Assets Owned by a Business Entity

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

## STUDENT FINANCIAL ASSISTANCE

### Introduction

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations (FR Notice 2/14/23 and Notice PIH 2023-27).

For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).



While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills.

- For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. The PHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below.
- During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

### Pre-HOTMA Section 8 Student Financial Assistance Limitation

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 (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 Chapter 3, 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.

Any student financial assistance not subject to inclusion under the regulations is fully excluded from annual income, 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 3B
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

### HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students.

#### Types of Assistance

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
  - The Higher Education Tribal Grant
  - The Tribally Controlled Colleges or Universities Grant Program

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education (not otherwise excluded by the Federally mandated income exclusions) are excluded [24 CFR 5.609(b)(9)(ii)]. Other student financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is not excluded from income.

*Actual covered costs* are defined as the actual costs of:

- Tuition, books, and supplies;
- Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the PHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

## Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27]

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

### OCHA Policy

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the PHA will exclude the full amount of the assistance received under Title IV from the family's annual income. The PHA will not calculate actual covered costs in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the PHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The PHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The PHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

### Example 1

- Actual covered costs: \$20,000
- Other student financial assistance: \$25,000
- Excluded income: \$20,000 (\$25,000 in financial assistance - \$20,000 in actual covered costs)
- Included income: \$5,000

When a student receives assistance from both Title IV of the HEA and from other sources, the PHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.



**Example 2**

Actual covered costs: \$25,000

Title IV HEA assistance: \$26,000

Title IV HEA assistance covers the students entire actual covered costs.

Other Student Financial Assistance: \$5,000

Excluded income: The entire Title IV HEA assistance of \$26,000

Included income: All other financial assistance of \$5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the PHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

**Example 3**

Actual covered costs: \$22,000

Title IV HEA assistance: \$15,000

The remaining amount not covered by Title IV HEA assistance is \$7,000 (\$22,000 in actual covered costs - \$15,000 in Title IV HEA assistance).

Other Student Financial Assistance: \$5,000

\$7,000 in remaining actual covered costs - \$5,000 in other financial assistance

Excluded income: \$15,000 entire amount of the Title IV HEA Assistance + \$5,000 in other financial assistance

Included income: \$0

**Example 4**

Actual covered costs: \$18,000

Title IV HEA Assistance: \$15,000

The remaining amount not covered by Title IV HEA assistance is \$3,000 (\$18,000 in actual covered costs - \$15,000 in Title IV HEA Assistance)

Other student Financial Assistance: \$5,000

When other student financial assistance is applied, financial assistance exceeds actual covered costs by \$2,000 (\$3,000 in actual covered costs - \$5,000 in other financial assistance).

Included income: \$2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

**PERIODIC PAYMENTS**

**Periodic payments are forms of income received on a regular basis.**

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. If unemployment income will not be repeated beyond the coming year, then it is excluded. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

**Lump-Sum Payments for the Delayed Start of a Periodic Payment**

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income. [24 CFR 5.609(b)(16)]

## OCHA Policy

The PHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the PHA is processing an annual reexamination, the PHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the PHA is processing an annual reexamination, then the PHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the PHA will conduct an interim in accordance with PHA policies in Chapter 11. If not, the PHA will consider the amount when processing the family's next annual recertification.



## Retirement Accounts

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets [24 CFR 5.609(b)(26); Notice PIH 2023-27].

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

### Social Security Benefits [Notice PIH 2018-24]

The PHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the PHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

## OCHA Policy

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the PHA will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

## Alimony and Child Support

### OCHA Policy

The PHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The PHA will count court-awarded amounts for alimony and child support unless the family certifies and the PHA verifies that the payments are not being made.

In order to verify that payments are not being made, the PHA will review child support payments over the last three months.

If payments are being made regularly, the PHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, the PHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the PHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If the PHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the PHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, the PHA will not include alimony or child support in annual income.

## **NONRECURRING INCOME**

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies [24 CFR 5.609(b)(24) and Notice PIH 2023-27].

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended.

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].

- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to such non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income. However, the value of regular in-kind donations (such as the value of groceries) received by friends and family are included.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

## **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.

### **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 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance 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, 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)].

### 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)].

## STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded [24 CFR 5.609(b)(19)].

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

## CIVIL RIGHTS SETTLEMENTS

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement [24 CFR 5.609(b)(25); FR Notice 2/14/23].

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under

the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed \$50,000 (as annually adjusted by an inflationary factor), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the PHA or owner chooses not to conduct the examination.

## ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(b) and FR Notice 1/31/24 that have not been discussed earlier in this chapter include the following:

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].



- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].

- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(i)(12)(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) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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 [24 CFR 5.609 I(12)(ii)].

Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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 unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

### OCHA 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 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].

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 (see Chapter 11).

- 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(b)(13)].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].
- Amounts that HUD is required by federal statute to exclude 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(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on January 31, 2014. 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)). This exclusion also applies to assets.
- (b) Benefits under Section 1780 of the Richard B. Russell School Lunch Act and Child Nutrition Act of 1966, including WIC and reduced-price lunches.
- (c) Payments, including for supportive services and reimbursement of out-of-pocket expenses, to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058). The exclusion also applies to assets.  
  
Except, the exclusion does not apply when the Chief Executive Officer of the Corporation for National and Community Service determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)).
- (d) Certain 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. 5506).



- (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)(1)).
- (g) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 which was reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).
- (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 Section 6).
- (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). This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407-1408).
- (m) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).
- (n) 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.). This exclusion also applies to assets.

(o) 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 and Thailand service veterans born with spinal bifida (42 U.S.C. 12637(d)).

(p) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721). This exclusion also applies to assets.

(q) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

(r) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)). This exclusion also applies to assets.

(s) 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) This exclusion also applies to assets.

(t) Amounts of student financial assistance 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, only, any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327 (as amended)).

(u) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).

(v) Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)).

(w) Any amounts in an “individual development account” are excluded from assets and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).

(x) 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. This exclusion also applies to assets.

(y) Distributions from an ABLÉ account, distributions from and certain contributions to an ABLÉ account established under the ABLÉ Act of 2014 (Pub. L. 113–295.), as described in Notice PIH 2019–09 or subsequent or superseding notice is excluded from income and assets.

(z) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409).

(aa) Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021.

(ab) Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013-1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first \$2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407).

(ac) Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a) (7), and (iii) received for service-connected disability under 38 U.S.C. Chapter 11 or dependency and indemnity compensation under 38 U.S.C. Chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.).

## B: ASSETS

### OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of net family assets.

Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapter 3.

Income from assets is always anticipated, irrespective of the income examination type.

#### OCHA Policy

The PHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The PHA will 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.

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 the PHA to show why the asset income determination does not represent the family's anticipated asset income.

## ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE

PHAs must include the value of any business or family assets disposed of by an applicant or participant 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 or reexamination, as applicable, in excess of the consideration received for the asset. An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [24 CFR 5.603(b)(2); Notice PIH 2023-27].

### Minimum Threshold

The *HCV 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].

#### OCHA 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.

### 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.

#### OCHA 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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.



## Family Declaration

### OCHA 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.

## ASSET INCLUSIONS AND EXCLUSIONS

Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

*Personal property* includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not

qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all non-necessary items of personal property is only included in annual income when the combined total value exceeds \$50,000 (adjusted annually by HUD). When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

### Necessary Personal Property

- Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)
- Furniture, carpets, linens, kitchenware
- Common appliances
- Common electronics (e.g., radio, television, DVD player, gaming system)
- Clothing
- Personal effects that are not luxury items (e.g., toys, books)
- Wedding and engagement rings
- Jewelry used in religious/cultural celebrations and ceremonies
- Religious and cultural items
- Medical equipment and supplies
- Health care–related supplies
- Musical instruments used by the family
- Personal computers, phones, tablets, and related equipment
- Professional tools of trade of the family, for example professional books
- Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities
- Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)

## Non-Necessary Personal Property

- Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))
- Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)
- Recreational boat/watercraft
- Expensive jewelry without religious or cultural value, or which does not hold family significance
- Collectibles (e.g., coins/stamps)
- Equipment/machinery that is not used to generate income for a business
- Items such as gems/precious metals, antique cars, artwork, etc.

### OCHA Policy

In determining the value of non-necessary personal property, the PHA will use the family's estimate of the value. The PHA 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.

### Checking and Savings Accounts

HUD considers bank accounts as non-necessary items of personal property. Whether or not non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets (Notice PIH 2023-27).

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

### ABLE Accounts

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance,

contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The PHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income [24 CFR 5.609(b)(10); Notice PIH 2019-09].

### Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets [24 CFR 5.603(b)(1)].

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0.

### OCHA Policy

The PHA will include interest or dividends earned by investment accounts 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.

In determining the market value of an investment account, the PHA will use the value of the account on the most recent investment report.



### Lump-Sum Additions to Net Family Assets

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income [24 CFR 5.609(b)(24)(viii); Notice PIH 2023-27].

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) 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 in prospective monthly amounts are also excluded from income.

However, these amounts may count toward net family assets. The PHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the PHA chooses not to conduct the examination.

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.

### OCHA Policy

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIP FAQs]. For example, if the family receives a \$1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

### Jointly Owned Assets

According to Notice PIH 2023-27, for assets owned jointly by the family and one or more individuals outside of the assisted family, the PHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

### Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]

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).

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable* trust, the creator has no access to the funds in the account. Typically, special needs trusts are considered irrevocable. Irrevocable trusts not under the control of any member of the family are excluded from net family assets. The value of the trust continues to be excluded from net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Further, where an irrevocable trust is excluded from net family assets, the PHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

- A revocable trust that is under the control of the family is included in net family assets when the grantor is a member of the assisted family. If a revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income. For example, interest earned or rental income if the property is held in the trust. The PHA must calculate imputed income on the revocable trust if net family assets are more than \$50,000, as adjusted by inflation, and actual income from the trust cannot be calculated (e.g., if the trust is comprised of farmland that is not in use).
- A revocable trust that is not under the control of the family is excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee.

For both irrevocable and revocable trusts, if the value of the trust is not considered part of net family assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.



## Life Insurance

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death (FR Notice 2/14/23 and Notice PIH 2023-27).

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. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

## Tax Refunds

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27].

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of net family assets. When the subtraction results in a negative number, then net family assets are considered \$0.

## Asset Exclusions

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].

- *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
- Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];
- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any “baby bond” account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

## DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

### Net Family Assets

*Net family assets* are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

#### OCHA 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 such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

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.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].

### Actual Income from Assets

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family’s annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market

value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The PHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

The PHA may not calculate or include any imputed income from assets when net family assets total \$50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

### Imputed Income from Assets

When net family assets exceed \$50,000 (adjusted annually by HUD), the PHA may not rely on self-certification. If actual returns can be calculated, the PHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the PHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). Imputed income is calculated by multiplying the net cash value of the asset, after deducting reasonable costs that would be incurred in disposing of the asset, by the HUD-published passbook rate. If the PHA can compute actual income from some but not all assets, the PHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.

## C: ADJUSTED INCOME

### INTRODUCTION

#### Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies and allow the PHA to deduct other permissive deductions in accordance with OCHA Policy. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611 *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

#### (a) *Mandatory deductions*

(1) \$480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of \$25);

(2) \$525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of \$25);

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed health and medical care 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; and

(4) Any reasonable childcare 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.



## Anticipating Expenses

### OCHA Policy

Generally, the PHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., childcare during school and non-school 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.

When calculating health and medical care expenses, the PHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, the PHA will use information for the previous 12-month period.

## DEPENDENT DEDUCTION

An allowance of \$480 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [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)].

## ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [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].

## HEALTH AND MEDICAL CARE EXPENSES DEDUCTION

Unreimbursed health and medical care expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed ten percent of annual income [24 CFR 5.603(b)].

This 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 health and medical care expense deduction, the unreimbursed health and medical care expenses of all family members are included. The PHA calculates health and medical care expenses based on the family's past expenses, but accounting for any anticipated changes in expenses during the certification period.

### Definition of Medical Expenses

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean "any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed."

Health and medical care expenses may be deducted from annual income only if they are eligible under this definition and not otherwise reimbursed.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition



of medical expenses, HUD is not permitting PHAs to specifically align their policies to IRS Publication 502. PHAs must review each expense to determine whether it is eligible in accordance with HUD’s definition.

While PHA policies may not specifically align with IRS Publication 502, HUD recommends PHAs use it as a standard for determining allowable expenses, and the PHA may list examples of allowable expenses in their policy provided they comply with HUD’s definition at 24 CFR 5.603. The PHA may not define *health and medical care expenses* more narrowly than the regulation.

**OCHA Policy**

The PHA will use the most current IRS Publication 502 as a standard for determining if expenses claimed by eligible families qualify as health and medical care expenses. However, under no circumstances will the PHA deduct any expenses listed in IRS Publication 502 that do not conform with HUD’s definition of *health and medical care expenses*.

**Summary of Typical Allowable Health and Medical Care Expenses**

- Services of medical professionals
- Surgery and medical procedures that are necessary, legal, and non-cosmetic
- Services of medical facilities
- Hospitalization, long-term care, and in-home nursing services
- Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor
- Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)
- Medical insurance premiums or the cost of a health maintenance organization (HMO)
- Medicare Part B and Part D premiums
- Substance abuse treatment programs
- Psychiatric treatment
- Ambulance services and some costs of transportation related to medical expenses. The PHA will use the most current medical mileage rate listed in IRS Publication 502.
- The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
- The costs of buying, training, and maintaining a guide dog or other service animal to assist a visually impaired or hearing disabled person, or a person with other physical disabilities. In general, this includes any costs, such as food, grooming, and veterinary care, incurred in maintaining the health and vitality of the service animal so that it may perform its duties.

*Note: This chart provides a summary of eligible health and medical care expenses only. In all cases, the PHA will consider whether health and medical expenses care expenses claimed by the family are eligible under HUD’s definition.*

**Families That Qualify for Both Health and Medical and Disability Assistance Expenses**

**OCHA 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 a health and medical care or disability assistance expenses, the PHA will consider them health and medical care expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## DISABILITY ASSISTANCE EXPENSES DEDUCTION

Unreimbursed reasonable expenses for attendant care and auxiliary apparatus for each member of the family who is a person with disabilities 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 ten percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)].

### 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.

#### OCHA 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.

### Eligible Auxiliary Apparatus

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type or special equipment to assist a person who is deaf or hard of hearing. [Notice PIH 2023-27]

### Eligible Attendant Care

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities ([Notice PIH 2023-27]).

#### OCHA Policy

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.

### 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.

### 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.

#### OCHA 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.

## Families That Qualify for Both Health and Medical and Disability Assistance Expenses

### OCHA 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 health and medical care or disability assistance expenses, the PHA will consider them health and medical care expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## CHILDCARE EXPENSE DEDUCTION

HUD defines *childcare 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 (age 12 and younger) (including foster children) 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 childcare. In the case of childcare necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

### Clarifying the Meaning of *Child* for This Deduction

Childcare 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, childcare expenses for foster children that are living in the assisted family’s household are included when determining the family’s childcare expenses [HCV GB, p. 5-29].

### Qualifying for the Deduction

#### Determining Who Is Enabled to Pursue an Eligible Activity

##### OCHA 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 childcare 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

### OCHA Policy

If the childcare 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 childcare expense being allowed by the PHA.

## Furthering Education

### OCHA Policy

If the childcare expense being claimed is to enable a family member to further their 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 childcare claimed.

## Being Gainfully Employed

### OCHA Policy

If the childcare 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 childcare 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 Childcare Expense Deduction

When a family member looks for work or furthers their education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare 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.

The PHA must not limit the deduction to the least expensive type of childcare. 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].



### OCHA Policy

When the childcare 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 childcare 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 Childcare Expenses

The type of care to be provided is determined by the assisted family. The PHA may not refuse to give a family the childcare expense deduction because there is an adult family member in the household that may be available to provide childcare [VG, p. 26].

### Allowable Childcare Activities

#### OCHA 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 childcare.

The costs of general housekeeping and personal services are not eligible. Likewise, childcare expenses paid to a family member who lives in the family's unit are not eligible; however, payments for childcare to relatives who do not live in the unit are eligible.

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, the PHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare 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 childcare 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

Childcare 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 their education, and (2) the family certifies, and the childcare provider verifies, that the expenses are not paid or reimbursed by any other source.

#### OCHA Policy

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For childcare 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 childcare costs, the PHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may present, and the PHA will consider, justification for costs that exceed typical costs in the area.

## HARDSHIP EXEMPTIONS

### Health and Medical Care and Disability Assistance Expenses

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed [24 CFR 5.611(c); Notice PIH 2023-27].

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

## Phased-In Relief

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first, after the date on which the PHA implements phased-in relief.

For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
  - When an eligible family's phased-in relief begins at an interim reexamination, the PHA will need to process another transaction one year later to move the family along to the next phase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

When an eligible family's phased-in relief begins at an interim reexamination, the PHA must process another transaction (either an interim reexamination or non-interim transaction, as applicable) one year later to move the family to the next phase.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another public housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the PHA has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the PHA. When a family moves with continued assistance or ports to a new PHA, the family



must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The PHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

### OCHA Policy

The PHA will not continue the phased-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

### General Relief

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in OCHA Policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the phased-in relief category above. HUD requires that PHAs develop policies defining what constitutes a hardship for purposes of this exemption.

The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

### OCHA Policy

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances. The PHA defines a *change in circumstances* as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexamination in accordance with PHA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

Other circumstances as determined by the PHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

### OCHA Policy

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request a hearing.

If the family qualifies for an exemption, the PHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the PHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. PHAs are not limited to a maximum number of 90-day extensions.

PHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

### OCHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The PHA will require updated verification based on the family's current circumstances. Additional extension(s) may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.

### Childcare Expense Hardship Exemption

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the PHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the PHA must recalculate the family's adjusted income and continue the childcare deduction.

The PHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The PHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. PHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period. [24 CFR 5.611(d) and Notice PIH 2023-27]

### OCHA Policy

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The PHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The PHA will consider qualification under this criterion on a case-by-case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the PHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The PHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the PHA denies the request, the notice must specifically state the reason for the denial. PHAs must provide families 30 days' notice of any increase in rent.

If the PHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e) (2)]. The notice must also state the requirement for the family to report to the PHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

### OCHA Policy

The PHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the PHA denies the hardship exemption request, the PHA notice will also state that if the family does not agree with the PHA determination, the family may request an informal grievance hearing.

If the family qualifies for an exemption, the PHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The PHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in PHA policies. PHAs are not limited to a maximum number of 90-day extensions. PHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

PHAs must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the PHA denies the request, the notice must specifically state the reason for the denial.

PHAs must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

### OCHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The PHA will extend relief for an additional 90-days if the family demonstrates to the PHA's satisfaction that the family continues to qualify for the hardship exemption. The PHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the PHA may terminate the hardship exemption if the PHA determines that the family no longer qualifies for the exemption.



## D: CALCULATING FAMILY SHARE AND PHA SUBSIDY

### OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

#### TTP Formula

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family (24 CFR 5.628-30). 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.D.

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.

#### Welfare Rent

##### OCHA Policy

Welfare rent does not apply in this locality.

#### Minimum Rent

##### OCHA Policy

The minimum rent for this locality is \$0.

#### Family Share

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 [24 CFR 982.305(a)(5)]. (For a discussion of the application of payment standards, see section 6.D.)

### PERMISSIVE DEDUCTIONS

The PHA may adopt additional permissive deductions from annual income if they establish a policy in the administrative plan. 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 the PHA 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]. Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility [24 CFR 5.611(b)(1)(ii)].

A PHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A PHA will not be eligible for an increase in HCV renewal funding for subsidy costs resulting from such deductions.

##### OCHA Policy

The PHA has opted not to use permissive deductions.

## PHA Subsidy

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 [24 CFR 982.505(b)]. (For a discussion of the application of payment standards, see section 6.D.)

## Utility Reimbursement

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 [24 CFR 982.514(b); 982.514(c)].

### OCHA Policy

The PHA 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.

### OCHA Policy

The PHA will issue all utility reimbursements monthly.

## FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT

### OCHA Policy

The financial hardship rules described below do not apply in this jurisdiction because the PHA has established a minimum rent of \$0.

## 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 ([24 CFR 5.630).

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.



## 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.

### OCHA 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.

### OCHA 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.

### OCHA 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.

### OCHA 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.

### OCHA Policy

The PHA 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.

#### Example: Impact of Minimum Rent Exemption Assume the PHA has established a minimum rent of \$50.

##### Family Share – No Hardship

\$0	30% of monthly adjusted income
\$15	10% of monthly gross income
N/A	Welfare rent
\$50	Minimum rent

Minimum rent applies. TTP = \$50

##### Family Share – With Hardship

\$0	30% of monthly adjusted income
\$15	10% of monthly gross income
N/A	Welfare rent
\$50	Minimum rent

Hardship exemption granted. TTP = \$15

### OCHA 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 PHA will make the determination of hardship within 30 calendar days.

### No Financial Hardship

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.

### OCHA 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

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.

### OCHA Policy

The PHA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### Long-Term Hardship

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.

## OCHA 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.

## APPLYING PAYMENT STANDARDS

### 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 [24 CFR 982.505; 982.503(b)].

*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 a zip code area or 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].

## 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

If a PHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, the PHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if the PHA does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, the PHA may either reduce the payment standard to the current amount in effect on the PHA's payment standard schedule, or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. The PHA may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

In any case, the PHA must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. The PHA's policy on decreases in the payment standard during the term of the HAP contract apply to all families under HAP contract at the time of the effective date of the decrease in the payment standard within the designated area.

## OCHA Policy

If a PHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the PHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The PHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

### Increases

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 (Voucher Size)

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

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.

## APPLYING UTILITY ALLOWANCES

### 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 (24 CFR 982.517).

For policies on establishing and updating utility allowances, see Chapter 16.

### Reasonable Accommodation and Individual Relief

On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the PHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as

special factors not within control of the resident, as the PHA deems appropriate. The family must request the higher allowance and provide the PHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

PHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as "Medical Baseline discounts") offered by the local utility company.

### OCHA Policy

The family must request the higher allowance and provide the PHA with information about the amount of additional allowance required.

The PHA will consider the following criteria as valid reasons for granting individual relief:

The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.

The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, the PHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or PHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. The PHA will also provide information on utility relief programs or medical discounts (sometimes referred to as "Medical Baseline discounts") that may be available through local utility providers.

At its discretion, the PHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or PHA-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

### Utility Allowance Revisions

At reexamination, the PHA must use the current utility allowance schedule [HCV GB, p. 18-8].

### OCHA 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.



## ***PRORATED ASSISTANCE FOR MIXED FAMILIES***

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 5.520).

# CHAPTER 7 VERIFICATION

## A. General Verification Requirements

### B. Verifying Family Information

### C. Verifying Income And Assets

### D. Verifying Mandatory Deductions

## INTRODUCTION

According to 24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, and Notice PIH 2023-27, 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 must follow the verification guidance provided by HUD in Notice PIH 2023-27 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.

## A. GENERAL VERIFICATION REQUIREMENTS

### FAMILY CONSENT TO RELEASE OF INFORMATION

#### Consent Forms

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]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886-A, this form does not release all the information necessary to the administration of the program. The PHA must also develop its own release forms to cover all other



necessary information [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27].

#### Form HUD-9886-A

All adult applicants and participants sign form HUD-9886-A, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886-A at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886-A at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886-A be signed only once. On or after January 1, 2024 (regardless of the PHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886-A at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886-A will not be submitted to the PHA except under the following circumstances [24 CFR 5.230(b) (1), b(2), (c)(4), and (c)(5); and Notice PIH 2023-27]:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the PHA in administrative instructions.

The PHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. PHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

## OCHA Policy

Family members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Form HUD-9886-A within 10 business days of turning 18 years of age at the family's next annual or interim reexamination, whichever is earlier.

The purpose of form HUD-9886-A 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).

The PHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the PHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the PHA to revoke consent.

### Penalties for Failing to Consent

If any family member who is required to sign a consent form fails to do so, the PHA must 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.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the PHA to access financial records from financial institutions, unless the PHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

## OCHA Policy

The PHA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with OCHA Policy.

In order for a family to revoke their consent, the family must provide written notice to the PHA.

Within 10 business days of the date the family provides written notice, the PHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the PHA will notify their local HUD office.

## USE OF OTHER PROGRAMS' INCOME DETERMINATIONS

PHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. PHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the PHA adopts a policy to accept this type of verification, the PHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. PHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs [24 CFR 5.609(c)(3) and Notice PIH 2023-27].

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Tax Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of

means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register*.

If the PHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, PHAs will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the PHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that PHAs are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by the PHA. PHAs are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If the PHA is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the PHA must calculate the family's annual income using traditional methods as outlined in Notice PIH 2023-27 and this chapter.

If the PHA uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet the PHA's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by



any family member who is enabled to work as a result of the expense. PHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

### OCHA Policy

When available and applicable, the PHA will accept other programs' Safe Harbor determinations of income at annual reexamination to determine the family's total annual income. The PHA will still require third-party verification of all deductions such as the health and medical care expense or childcare expense deductions. Further, if the family is eligible for and claims the disability assistance expense or childcare expense deductions, where applicable, the PHA will obtain third-party verification of the amount of employment income of the individual(s) enabled to work in order to cap the respective expenses as required.

Prior to using any Safe Harbor determination from another program, the PHA will ask the family if they agree with the income amounts listed. If the family disputes the income amounts on the Safe Harbor determination, the PHA will obtain third-party verification of all sources of income and assets (as applicable).

The PHA will not accept other programs' determinations of income for any new admission or interim reexamination.

With the exception of income determinations made under the Low-Income Housing Tax Credit (LIHTC) program, the PHA will accept Safe Harbor determinations from any of the programs listed above.

In order to be acceptable, the income determination must:

Be dated within 12 months of the dates listed above;

State the family size

Be for the entire family (i.e., the family members listed in the documentation must match the family's composition in the assisted unit, except for household members); and

Must state the amount of the family's annual income.

The determination need not list each source of income individually. If the PHA does not receive any acceptable income determination documentation or is unable to obtain documentation, then the PHA will revert to third-party verification of income for the family.

When families present multiple verifications from the same or different acceptable Safe Harbor programs, the PHA will use the most recent income determination, unless the family presents acceptable evidence that the PHA should consider an alternative verification from a different Safe Harbor source.

When the PHA uses a Safe Harbor income determination from another program, and the family's income subsequently changes, the family is required to report the change to the PHA. Depending on when the change occurred, the change may or may not impact the PHA's calculation of the family's total annual income. Changes that occur between the time the PHA receives the Safe Harbor documentation and the effective date of the family's annual reexamination will not be considered. If the family has a change in income that occurs after the annual reexamination effective date, the PHA will conduct an interim reexamination if the change meets the requirements for performing an interim reexamination as outlined in Chapter 11. In this case, the PHA will use third-party verification to verify the change.

## **STREAMLINED INCOME DETERMINATIONS**

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 other inflationary adjustment factor. Streamlining policies are optional. 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 **[24 CFR 960.257(c); Notice PIH 2023-27]**.

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.

When 90 percent or more of a family's unadjusted income is from fixed sources, the PHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both

that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but PHAs may choose to adjust sources of non-fixed income based on third-party verification. PHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, PHAs may apply a COLA to each of the family's sources of fixed income. PHAs must determine all other income using standard verification requirements as outlined in Notice PIH 2023-27.

### **OCHA Policy**

When the PHA does not use a Safe Harbor income determination from a federal assistance program to determine the family's annual income as outlined above, then PHA will use a streamlined income determinations where applicable.

Regardless of the percent of a family's unadjusted income from fixed income sources:

The PHA will streamline the annual reexamination process by applying the verified COLA/inflationary adjustment factor to fixed-income sources.

The family will be required to sign a self-certification stating that their sources of fixed income have not changed from the previous year.

The PHA will document in the file how the determination that a source of income was fixed was made.

If the family's sources of fixed income have changed from the previous year, the PHA will obtain third-party verification of any new sources of fixed income.

All other income will be verified using third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy.

In the following circumstances, regardless of the percentage of income received from fixed sources, the PHA will obtain third-party verification as outlined in Notice PIH 2023-27 and Chapter 7 of this policy:

Of all assets when net family assets exceed \$50,000;

Of all deductions and allowances from annual income;

If a family member with a fixed source of income is added;

If verification of the COLA or rate of interest is not available;

During the intake process and at least once every three years thereafter.

## VERIFICATION HIERARCHY

When the PHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires the PHA to obtain third-party verification of [Notice PIH 2023-27]:

- Reported family annual income;
- The value of net family assets when the net value exceeds \$50,000 (as adjusted annually);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

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:

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The PHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
  - Written third-party verification from the source, also known as "family-provided verification"
  - Or EIV plus self-certification
- Medium: Level 3: Written third-party verification form
- Medium: Level 2: Oral third-party verification
- Low: Level 1: Self-certification (not third-party verification)

Each of the verification methods is discussed in subsequent sections below.

## File Documentation

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.

## LEVEL 5 AND 6 VERIFICATIONS: 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 for a number of individuals. PHAs may use UIV sources before or during a family reexamination.

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.

## 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 annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.



The following policies apply to the use of HUD's EIV system.

### EIV Income Report

PHAs are required to obtain an EIV Income Report for each family any time the PHA conducts an annual reexamination. However, PHAs are not required to use the EIV Income Report:

- At annual reexamination if the PHA used Safe Harbor verification from another means-test federal assistance program to determine the family's income; or
- During any interim reexaminations.

The EIV Income Report is also not available for program applicants at admission.

When required to use the EIV Income Report, in order for the report to be considered current, the PHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.

### OCHA Policy

Except for when Safe Harbor verification from another means-tested federal assistance program is used to determine the family's annual income, the PHA will obtain an EIV Income Report for all annual reexaminations for all families on a monthly basis. The PHA will ensure that all EIV Income Reports are pulled within 120 days of the effective date of the annual reexamination.

Income reports will only be used for interim reexaminations as necessary. For example, EIV may be used to verify that families claiming zero income are not receiving income from any sources listed in EIV.

Income reports will be retained in participant files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of the family's participation.

When the PHA determines through EIV 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.

### New Hires Report

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly [Notice PIH 2023-27].

PHAs must review this information at annual reexamination except when the PHA uses Safe Harbor verification from another means-tested federal assistance program to determine the family's income.

PHAs that do not require families to undergo interim reexaminations for earned income increases after an interim decrease are not required to review this report between a family's annual reexamination. If the PHA requires an interim for increases in earned income after an interim decrease, then the PHA must review the report quarterly after the family's interim decrease.

### OCHA Policy

In accordance with PHA policies in Chapter 11, the PHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which the PHA uses Safe Harbor income determinations to determine a family's annual income, the PHA will only review the New Hires Report at annual reexamination.

### No Income Reported by HHS or SSA Report

This report is a tool for PHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that the participant does not have any income. PHAs obtain written, third-party verification of any income reported by the participant. The PHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

### OCHA Policy

The PHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The PHA will re-verify the status of participants identified on the report quarterly. Based on the information provided by the family and in EIV, the PHA may require that family members provide verifications or sign release forms in order to obtain additional verification.

When the PHA determines through this report 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

### OCHA Policy

The PHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, PHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The PHA must notify the owner in writing of the deceased head of household.

PHAs may list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

### OCHA Policy

The PHA will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy. The PHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

### Other EIV Reports [Notice PIH 2023-27]

The PHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

### Upfront Income Verification Using Non-HUD Systems

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources.

### OCHA Policy

The PHA will inform all applicants and participants of its use of the following UIV resources:

[Insert any additional UIV sources used by the PHA]

### EIV Identity Verification Report

The EIV system verifies tenant identities against SSA records. These records are compared to HUD 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 2023-27].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

### OCHA 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 discrepancies by obtaining appropriate documentation from the participant. When the PHA determines that discrepancies exist as a result of PHA errors such as spelling errors or incorrect birth dates, it will correct the errors promptly.

### Deceased Tenants Reports

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The PHA is required to review the report at least quarterly [Notice PIH 2012-4 and Notice PIH 2023-27].



## LEVEL 4 VERIFICATION

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification (Notice PIH 2023-27).

### EIV + Self-Certification

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as EIV + self-certification. When calculating income using this method, the PHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

#### OCHA Policy

At annual reexamination, if the PHA is unable to use a determination of income from a means-tested federal assistance program and if there are no reported changes to an income source, the PHA will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

The PHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The PHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the PHA will use written third-party verification from the source as outlined below.

The PHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

## Written Third-Party Verification from the Source

Written, third-party verification from the source is also known as “tenant-provided verification.” In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the PHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. The PHA may use the verification obtained during an interim reexamination for an annual reexamination if there have been no other changes to annual income since the interim reexamination. Documents 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. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer’s transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

The PHA is required to obtain, at minimum, two current and consecutive pay stubs when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, the PHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When the family disputes EIV-reported employment income, the PHA uses written third-party verification.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

#### OCHA Policy

In general, the PHA will use third-party verification from the source in the following circumstances:

- At annual reexamination when EIV + self-certification is not used;
- For all new admissions; and
- For all interim reexaminations.

The PHA will not use this method if the PHA is able to use an income determination from a means-tested federal assistance program or if the PHA uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the PHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

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. 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 from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, the PHA will obtain one statement that reflects the current balance of the account.

When pay stubs are used, the PHA will require the family to provide the two most current, consecutive pay stubs. At the PHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the PHA may request additional paystubs or a payroll record.

### **LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM**

This type of verification is a form developed by the PHA and used uniformly for all families when needed to collect information from a third-party source. This is known as "traditional third-party verification." PHAs send a PHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset) (Notice PIH 2023 -27).

The PHA may use this method when higher forms are unavailable or are rejected by the PHA or when the family is unable to provide acceptable verification. The PHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

#### **OCHA Policy**

Typically, the PHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, the PHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.



### **LEVEL 2: ORAL THIRD-PARTY VERIFICATION**

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person (Notice PIH 2023-27).

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 must 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.

The PHA may skip this level of verification if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

#### **OCHA Policy**

In general, the PHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, the PHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if the PHA chooses to obtain oral third-party verification, the PHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed.

### **When Third-Party Verification is Not Required**

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 (Notice PIH 2023-27).

## OCHA 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].



## 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.

### **LEVEL 1: NON-THIRD-PARTY VERIFICATION TECHNIQUE: SELF-CERTIFICATION**

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the PHA has not been successful in obtaining information via all other required verification techniques (Notice PIH 2023-27).

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$50,000 or less and the PHA has adopted a policy to accept self certification
- The family declares that they do not have any present ownership in any real property
- A family reports zero income;
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- The PHA has adopted a policy to implement streamlined verification for fixed sources of income (See Chapter 11)

When the PHA was required to obtain third-party verification but instead relies self-certification, the family's file must be documented to explain why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

## OCHA 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 will include the following language:

"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)."

## B: VERIFYING FAMILY INFORMATION

### VERIFICATION OF LEGAL IDENTITY

#### OCHA Policy

The PHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
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
U.S. military discharge (DD 214)	Health and Human Services ID
Current U.S. passport	Certified school records
Current government employer identification card with picture	

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 must be signed by the family member whose information or status is being verified.

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 themselves to be a participant.

### SOCIAL SECURITY NUMBERS

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 (24 CFR 5.216, Notice PIH 2023-27).

Note that an individual who previously declared to have eligible immigration status may not change their 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

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the PHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the PHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

#### OCHA Policy

The PHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

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.

#### OCHA Policy

The PHA 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.

#### **OCHA 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. 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.

#### **OCHA Policy**

The PHA 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.

#### **OCHA 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.

#### **OCHA Policy**

The PHA 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.

#### **OCHA Policy**

Once an individual's status is classified as "verified" in HUD's EIV system, the PHA will not remove and destroy copies of documentation accepted as evidence of social security numbers.

### ***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.

#### **OCHA 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.



## **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.

### **OCHA 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**

### **OCHA 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).

## **Separation or Divorce**

### **OCHA 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.

## **Absence of Adult Member**

### **OCHA 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), if the PHA so requests.

## **Foster Children and Foster Adults**

### **OCHA Policy**

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

## VERIFICATION OF STUDENT STATUS

### General Requirements

#### OCHA 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 childcare expenses to enable a family member to further their education.

The family includes a student enrolled in an institution of higher education.

### Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

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.

#### OCHA Policy

In accordance with the verification hierarchy described in section 7.A, 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 Exhibit 3-2).

The student is at least 24 years old.

The student is a veteran, as defined in section 3.B.

The student is married.

The student has at least one dependent child, as defined in Section 3.B.

The student is a person with disabilities, as defined in Section 3.B, 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.C) or the student's independence from their parents (see below).



### Independent Student

#### OCHA Policy

The PHA will verify a student's independence from their 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 their 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.B)

Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of independent student (see section 3.B)

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, except in cases in which the PHA determines that the student is a vulnerable youth (see section 3.B)

## 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

### 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].

#### OCHA 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.

### 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.

#### OCHA 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.

## CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

### 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)]

### 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.

## OCHA 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.

## 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.

### PHA 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 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.

## VERIFICATION OF PREFERENCE STATUS

The PHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

## OCHA 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.

**1. Domestic Violence Preference:** This preference will be verified through review of the referral documents from the partnering service agency or consortia.

**2. Homeless Preference:** This preference will be verified through review of the referral documents from the OCHA-approved entity, including that agency's certification the family is homeless within OCHA's jurisdiction.



**3. Move On Program Preference:** This preference will be verified through review of referral documents from the approved Move On participating program agency with which OCHA has an active MOU.

**4. Residency Preference:** OCHA will verify through review of the following documents:

Residency: one of the below documents:

- Current lease
- Utility bill with family name
- Mail from the SSA
- Unemployment benefits letter
- Letter from social service organization
- Financial institution documentation
- Educational or school record
- Current Driver's License or state issued Identification Card

Work: Employment record or letter reflecting the work address as within the PHA's jurisdiction

Hired to work: Letter of hire reflecting the work address as within the PHA's jurisdiction

**5. Elderly Preference:** OCHA will verify in accordance with Chapter 7, Section B "Documentation of Age" verification requirements.

**6. Disability Preference:** OCHA will verify in accordance with Chapter 7, Section B "Documentation of Disability" verification requirements.

**7. Families with Children Preference:** OCHA will verify in accordance with Chapter 7, Section B "Documentation of Age"

verification requirements, as well as family certification of family composition.

**8. Veteran's Preference:** OCHA will verify this preference through receipt of a DD214 showing discharge for any reason other than dishonorable. Surviving spouses must provide proof of relationship and certify as to their unmarried status.

**9. Involuntary Displacement Preference:** OCHA will verify this preference through review of documents documenting the family is being, or will be, involuntarily displaced due to:

- Natural Disaster, such as a fire, flood, earthquake or governmentally declared health pandemic that resulted in the inhabitability of the applicant's unit.
- Hate Crime/Violent Crime consisting of actual or threatened physical violence or intimidation directed against an applicant and their property that is based on race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status disability, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes documented by a law enforcement agency stating the applicant is in an immediate life-threatening situation and an immediate transfer would minimize the situation.
- Government Action related to code enforcement or public improvement or development.
- Landlord Action that results in an applicant having to vacate their unit, where the reason for the owner action is beyond the control of the applicant's ability to control or prevent, e the applicant having met all previously imposed conditions of occupancy, and the action is other than a rent increase.

**Foster Youth to Independence Preference:** OCHA will verify this preference through review of internal agency records.

## C: VERIFYING INCOME AND ASSETS

Chapter 6 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 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.

### OCHA Policy

The following policies do not apply when the PHA uses a Safe Harbor income determination from a means-tested federal assistance program.

## EARNED INCOME

### Tips

#### OCHA Policy

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

### Wages

#### OCHA Policy

When the PHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

## BUSINESS AND SELF EMPLOYMENT INCOME

The PHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

### OCHA Policy

Business owners and self-employed persons will be required to provide:

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).

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.

For self-employed individuals who claim they do not to file tax returns, The PHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the PHA will provide a format for the individual to declare their income and expenses. The PHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

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.

## **PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

Social Security/SSI Benefits [Notice PIH 2023-27]

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the PHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is

unable to provide the document or documents, the PHA should help the applicant request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the PHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the PHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. PHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The PHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the PHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the PHA should help the participant request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The PHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

## **ALIMONY OR CHILD SUPPORT**

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family (Notice PIH 2023-27).

### OCHA Policy

Verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 12 months 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

Note: Families are not required to undertake independent enforcement action.

## NONRECURRING INCOME

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. PHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year (Notice PIH 2023-27).

### OCHA Policy

The PHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, the PHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

## ASSETS AND INCOME FROM ASSETS

### Net Family Assets

At admission and reexam, for families with net assets totaling \$50,000 or less (adjusted annually), the PHA may, but is not required to, accept the family's self-certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. PHAs must clarify during the self-certification process which assets are included/excluded from net family assets (24 CFR 5.603).

For PHAs that choose to accept self-certification, the PHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

PHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000, the PHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD.

When verification of assets is required, PHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

### OCHA Policy

For families with net assets totaling \$50,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income. 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 reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

When verification is required, in determining the value of checking or savings accounts, the PHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the PHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

### Self-Certification of Real Property Ownership

The PHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3. The PHA may accept a self-certification from the family stating that the family does not have any present ownership in any real property. If the family certifies that they do not have any present ownership interest in real property, the PHA may take that as sufficient to determine the family is not out of compliance with the real property restriction. If the family declares they have present ownership in real property, the PHA must obtain third-party verification of the family's legal right to reside in the property, the effective legal authority to sell

the property, and whether the property is suitable for occupancy by the family as a residence [24 CFR 5.618(b)(2); Notice PIH 2023-27].

### OCHA Policy

The PHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The PHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the PHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the PHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

## 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. 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]. The PHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

### OCHA Policy

The PHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

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 they have given this \$10,000 to their 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 their 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.*

## NET INCOME FROM RENTAL PROPERTY

### OCHA 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.

## FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the PHA does not accept self-certification of assets. PHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000 (Notice PIH 2023-27).

## RETIREMENT ACCOUNTS

### OCHA Policy

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.

## INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded (Notice PIH 2023-27).

For fully excluded income, the PHA is not required to follow the verification hierarchy. For fully excluded income, the PHA is not required to document why third-party verification is not available, or report the income on the 50058. Fully excluded income is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any Federal Register notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

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).

### OCHA 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.

## ZERO INCOME FAMILIES

PHAs have discretion to establish reasonable procedures to manage the risk of unreported income, such as asking families to complete a zero-income worksheet at admission or periodically after admission to determine if they have any sources of unreported income or searching any UIV sources for unreported income (Notice PIH 2023-27).

In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)].

PHAs may accept a self-certification of zero income from the family without taking any additional steps to verify zero reported income. HUD does not require such self-certifications be notarized.



PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

### OCHA Policy

The PHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc., are not being received by families claiming to have zero annual income.

The PHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the PHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The PHA will only conduct interims in accordance with OCHA Policy in Chapter 11.

## STUDENT FINANCIAL ASSISTANCE

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are included [24 CFR 5.609(b)(9)(ii)].

### OCHA Policy

The PHA will request written third-party verification of both the source and the amount of student financial assistance. 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, unless the student's only source of assistance is assistance under Title IV of the HEA, the PHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

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.A.

## 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 their parents or a vulnerable youth in accordance with OCHA Policy [24 CFR 5.612, FR Notice 4/10/06, p. 18146, and FR Notice 9/21/16].

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.

### OCHA 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.B). 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.

## D: VERIFYING MANDATORY DEDUCTIONS

### 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 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 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.

### HEALTH AND MEDICAL CARE EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) ([Pub. L. 104-191](#), 110 Stat. 1936) and the Privacy Act of 1974 ([Pub. L. 93-579](#), 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The PHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

#### Amount of Expense

### OCHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as

pharmacy printouts or receipts.

When income is projected at new admission or interim, 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.

When income is projected at new admission or interim, if third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the PHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care 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 health and medical care 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 of this plan.

### Qualified Expenses

To be eligible for the health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for the PHA's policy on what counts as a medical expense.

### Unreimbursed Expenses

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

#### OCHA 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.

### Expenses Incurred in Past Years

#### OCHA Policy

At new admission and interim reexam, 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

## 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.

The PHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The PHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the PHA must redact all personally identifiable information [FR Notice 2/14/23].

### Amount of Expense

#### Attendant Care

#### OCHA Policy

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or canceled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

When income is projected at new admission or interim, if third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the PHA will redact all personally identifiable information.

If the PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the PHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the PHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will PHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

## Auxiliary Apparatus

### OCHA 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 Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

## 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. The PHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

## Family Member(s) Permitted to Work

The PHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

### OCHA 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

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

### OCHA 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.

## CHILDCARE EXPENSES

Policies related to childcare expenses are found in Chapter 6. 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 childcare.
- The costs are reasonable.

## Eligible Child

To be eligible for the childcare 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.).

## Unreimbursed Expense

To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

### OCHA Policy

The family (and the care provider) will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

## 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.

### OCHA 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 their education by the childcare

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 childcare. 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.

## Allowable Type of Childcare

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

### OCHA Policy

The PHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6.

The PHA will verify that the fees paid to the childcare provider cover only childcare 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 childcare 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 childcare costs can be deducted.

### OCHA 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.

# CHAPTER 8

## NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS (NSPIRE)

### A: NSPIRE Standards

### B: The Inspection Process

### C: Rent Reasonableness

## INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) and Project Based Voucher (PBV) assistance meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2024. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan (24 CFR 5 Subpart G; Notice PIH 2023-28).

All units must pass an NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets NSPIRE standards. 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.

Provided they meet certain requirements, HUD permits PHAs to establish some additional local requirements in their administrative plans. The use of the term NSPIRE in this plan refers to the combination of both HUD and PHA-established requirements. However, state and local codes, compliance is not part of the determination of whether a unit passes the NSPIRE standards.

This chapter explains HUD and PHA requirements related to physical inspections and rent reasonableness as follows:

**A. NSPIRE Standards.** This part discusses NSPIRE standards required of units occupied by HCV and PBV-assisted families. It also identifies affirmative habitability requirements for all units and life-threatening conditions that must be corrected in 24 hours.

**B. 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 NSPIRE standards.

**C. Rent Reasonableness.** This part discusses the policies the PHA will use to make rent reasonableness determinations.



Special NSPIRE requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction. Special requirements for the PBV and RAD PBV programs (if applicable) are discussed in Chapters 17 and 18, respectively.

## A: NSPIRE STANDARDS

NSPIRE standards are published on HUD's NSPIRE website as well as in the NSPIRE Final Rule [FR Notice 5/1//2023].

## INSPECTABLE AREAS

NSPIRE defines the inspectable areas for inspection under the standards as inside, outside and unit. However, the inspection requirement for the HCV and PBV programs only applies to units occupied or to be occupied by HCV or PBV participants and common areas and exterior areas which either service or are associated with such units [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)].

## **AFFIRMATIVE HABITABILITY REQUIREMENTS**

NSPIRE provides for minimum, or affirmative, habitability requirements for each area (unit, inside, outside) [24 CFR 5.703(b), (c), and (d)]. These areas must meet these requirements for habitability, which are listed in Exhibit 8-1.

The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness [24 CFR 5.703(e)].

The NSPIRE Smoke Alarm Standard does not require that smoke alarms have a sealed battery; however, upon the effective date of the Public and Federally Assisted Housing Fire Safety Act of 2022 on December 29, 2024, sealed batteries will be required.

## **MODIFICATIONS TO PROVIDE ACCESSIBILITY**

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) 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; Notice PIH 2014-02).

Modifications to units to provide access for a person with a disability must meet all applicable NSPIRE 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.



### **OCHA 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.

## **ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations to the NSPIRE standards 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 NSPIRE standards and approved variations must be added to the administrative plan [24 CFR 5.705(a)(3) and Notice PIH 2023-28].

HUD may approve inspection criteria variations if the variations apply standards in local housing codes or other codes adopted by the PHA or because of local climatic or geographic conditions. Acceptability criteria variations may only be approved by HUD if such variations either meet or exceed the performance requirements or significantly expand affordable housing opportunities for families assisted under the program.

### **OCHA Policy**

The PHA has not requested any HUD-approved variations to NSPIRE standards. OCHA will consider requesting variations with HUD where HUD guidelines are more burdensome than local minimum housing code.

## **LIFE-THREATENING DEFICIENCIES**

HUD previously required the PHA to define life-threatening conditions in the administrative plan. The NSPIRE standards now describe those conditions which are considered life-threatening and must be corrected within 24 hours (Notice PIH 2023-28).

The following are a list of life-threatening deficiencies under NSPIRE:

Inspectable Item	Deficiency
<b>Call-for-Aid System</b>	System is blocked, or pull cord is higher than 6 inches off the floor.
	System does not function properly
<b>Carbon Monoxide Alarm</b>	Carbon monoxide alarm is missing, not installed, or not installed in a proper location.
	Carbon monoxide alarm is obstructed.
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.
<b>Chimney</b>	A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.
	Chimney exhibits signs of structural failure.
<b>Clothes Dryer Exhaust Ventilation</b>	Electric dryer transition duct is detached or missing.
	Gas dryer transition duct is detached or missing.
	Electric dryer exhaust ventilation system has restricted airflow.
	Dryer transition duct is constructed of unsuitable material.
	Gas dryer exhaust ventilation system has restricted airflow.
<b>Door – Entry</b>	Entry door is missing.
<b>Door – Fire Labeled</b>	Fire labeled door is missing.
<b>Egress</b>	Obstructed means of egress.
	Sleeping room is located on the third floor or below and has an obstructed rescue opening.
	Fire escape is obstructed.
<b>Electrical – Conductor, Outlet, and Switch</b>	Outlet or switch is damaged.
	Exposed electrical conductor.
	Water is currently in contact with an electrical conductor.
<b>Electrical – Service Panel</b>	The overcurrent protection device is damaged.
<b>Exit Sign</b>	Exit sign is damaged, missing, obstructed, or not adequately illuminated.
<b>Fire Escape</b>	Fire extinguisher is damaged or missing.
<b>Fire Extinguisher</b>	Fire extinguisher pressure gauge reads over or under-charged.
	Fire extinguisher service tag is missing, illegible, or expired.
	Fire extinguisher is damaged or missing.
<b>Flammable and Combustible Items</b>	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR Improperly stored chemicals.
<b>Guardrail</b>	Guardrail is missing or not installed.
	Guardrail is not functionally adequate.
<b>Heating, Ventilation, and Air Conditioning (HVAC)</b>	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.
	Unvented space heater that burns gas, oil, or kerosene is present.
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.

Inspectable Item	Deficiency
Leak – Gas or Oil	Natural gas, propane, or oil leak.
Mold-like Substance	Presence of mold-like substance at extremely high levels is observed visually.
Smoke Alarm	Smoke alarm is not installed where required.
	Smoke alarm is obstructed.
	Smoke alarm does not produce an audio or visual alarm when tested.
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.
	Sprinkler assembly has evidence of corrosion.
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.
Structural System	Structural system exhibits signs of serious failure.
Toilet	Only 1 toilet was installed, and it is missing.
Water Heater	Chimney or flue piping is blocked, misaligned, or missing.
	Gas shutoff valve is damaged, missing, or not installed.

However, PHAs may add additional deficiencies which the PHA considers life-threatening provided they are described in the administrative plan.

#### OCHA Policy

In addition to those listed under the NSPIRE standards, the following are considered life-threatening conditions:

Utilities not in service, including no running hot water

#### OCHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

#### Owner Responsibilities

The owner must maintain the unit in accordance with NSPIRE regulations and standards. 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 (as provided in 24 CFR 982.404(b) and 982.551(c)).

#### OCHA Policy

The owner is responsible for all NSPIRE 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.

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.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the NSPIRE standards in accordance with HUD requirements. See 8-II-G.

## OWNER AND FAMILY RESPONSIBILITIES

### Family Responsibilities

The family is responsible for correcting the following deficiencies (24 CFR 982.404):

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear.

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.

## LEAD-BASED PAINT

PHAs and owners must comply with the requirements and timelines in 24 CFR Part 35 Subpart M—Tenant-Based Rental Assistance and Subpart H—Project-Based Assistance. PHAs and owners are reminded that any deteriorated paint in target housing, or other lead-based paint hazard identified through a lead-based paint risk assessment or lead-based paint inspection is considered a violation of NSPIRE standards.

For the HCV program, Subpart M applies to units where a child under age six resides or is expected to reside, common areas that service that unit, and exterior painted surfaces associated with that unit or common areas. For project-based programs, Subpart H applies to assisted units and common areas of the property regardless of whether a child under age six resides or is expected to reside in the unit. NSPIRE does not alter any of the lead-based paint requirements in Part 35 for these programs.

### Special Requirements for Children with Elevated Blood Lead Level

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 six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation 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. [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

Within 30 days after receiving the environmental investigation 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; 40 CFR 745.227]. 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.B.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.



## VIOLATION OF SPACE STANDARDS

Units assisted under the HCV or PBV programs must have at least one bedroom or living/sleeping room for each two persons. 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]. Each habitable room must have two working outlets or one working outlet and a permanent light. HUD defines a *habitable room* as a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas [24 CFR 5.703(d)(5); FR Notice 5/11/23].

A unit that does not meet these space standards is defined as *overcrowded*.

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.

## B: THE INSPECTION PROCESS

### OVERVIEW

#### Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow (24 CFR 982.405).

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually or biennially (or triennially for small rural PHAs as defined in 24 CFR 982.305(b)(2)), depending on OCHA Policy, to confirm that the unit still meets NSPIRE standards.

- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the NSPIRE standards.

### Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all NSPIRE 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).

For information on the inspection of PHA-owned units in the PBV program, see Chapters 17 and 18.

### Inspection Costs

The PHA may not charge the family for unit inspections or reinspections [Notice PIH 2016-05; 24 CFR 5.705(d); 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.

### OCHA Policy

The PHA will not charge a fee for failed reinspections.

### Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform NSPIRE inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates NSPIRE standards, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

### OCHA Policy

The PHA will not conduct any inspection using RVI.

### Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

### OCHA 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].

### OCHA Policy

When a family occupies the unit at the time of inspection an authorized adult 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.

## INITIAL INSPECTION

### Approving Units

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet NSPIRE standards before the PHA approves assisted tenancy. However, while the PHA is required to conduct an inspection prior to approving assisted tenancy, PHAs have two options for bringing units under HAP contract (or, in the case of PBV, approving occupancy and the execution of a lease) more quickly. The PHA may, but is not required to approve assisted tenancy and start HAP if the unit (FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406):

- Fails the initial inspection, but only if no life-threatening deficiencies are identified.
- Passed an alternative inspection in the last 24 months.

Otherwise, if neither of the above provisions are adopted, the PHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

#### OCHA Policy

The unit must pass the initial inspection on or before the effective date of the HAP contract.

The PHA will not rely on alternative inspections and will conduct an initial inspection for each unit prior to executing a HAP contract with the owner.

### Timing of Initial Inspections

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection. [24 CFR 982.395(b)(2)(i)]

#### OCHA Policy

The PHA will complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

### Inspection Results and Reinspections

For new units proposed for the HCV program, life-threatening deficiencies must be resolved before the HAP contract is executed and the family moves into the unit.

#### OCHA Policy

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the PHA for good cause. The PHA will reinspect the unit within five business days of the date the owner notifies the PHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails at the time of the reinspection, the PHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The PHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

### 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.

#### OCHA Policy

Utility service must be available for testing at the time of the initial inspection.

### Appliances

#### OCHA 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 NSPIRE 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.



**ANNUAL/BIENNIAL INSPECTIONS**

HUD requires the PHA to inspect each unit under HAP contract at least biennially (or triennially for small rural PHAs), to confirm that the unit still meets NSPIRE standards. The inspection may be conducted in conjunction with the family’s annual reexamination but also may be conducted separately (24 CFR 982.405 and 982.406; Notice PIH 2016-05).

**OCHA Policy**

Each unit under HAP contract must be inspected biennially within 24 months of the last full inspection. The PHA reserves the right to require annual inspections of any unit or owner at any time.

The PHA will not rely on alternative inspection standards.

**Scheduling the Inspection**

**OCHA Policy**

If an adult 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 five business days of the originally scheduled date. The PHA may schedule an inspection more than five 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.

**SPECIAL INSPECTIONS [24 CFR 982.405(g)]**

If a participant family 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. [24 CFR 982.405(g)]

**OCHA Policy**

During a special inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual/biennial 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/biennial inspection.

**QUALITY CONTROL INSPECTIONS**

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 NSPIRE standards [24 CFR 982.405(b); 24 CFR 985.3(e); HCV GB, p. 10-32].

The unit sample must include only units that have been inspected within the preceding three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

**INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

**Correction Timeframes**

Each deficiency is identified in the NPSIRE standards as either life-threatening, severe, moderate, or low.

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a PHA-approved extension) after notice has been provided. If low deficiencies are present in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

**Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies deficiencies, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

### OCHA Policy

When life-threatening deficiencies are identified, the PHA will immediately notify both parties by telephone 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 severe or moderate are identified, the PHA will send the owner and the family a written notification of the inspection results within five 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. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

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 OCHA 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 OCHA Policy (see Chapter 12).

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

#### OCHA 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.

The PHA will not accept self-certification of repairs. Photos or other documentation of repairs will not be accepted in lieu of a reinspection.

### Extensions

For life-threatening deficiencies, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are severe or moderate, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate.

#### OCHA 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.

### ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with NSPIRE standards, the PHA must take prompt and vigorous action to enforce the owner obligations.

#### HAP Abatement

If an owner fails to correct 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 deficiencies that are the family's responsibility.

### OCHA 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 five 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.

### OCHA 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.

## ENFORCING FAMILY COMPLIANCE

Families are responsible for correcting any deficiencies 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 [24 CFR 982.404(b)].

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.



## C: RENT REASONABLENESS

### 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 (24 CFR 982.507).

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

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) [24 CFR 982.352(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 inspection have been corrected.

#### **OCHA 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 10 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.

#### **OCHA 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**

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 [24 CFR 982.507(c)].

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.

## **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 [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, 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.

## PHA RENT REASONABLENESS METHODOLOGY

### How Market Data Is Collected

#### OCHA 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

#### OCHA 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 five business days of the PHA's request for information or the owner's request to submit information.

# CHAPTER 9

## GENERAL LEASING POLICIES

### INTRODUCTION

Chapter 9 covers the lease-up process from the participant's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the PHA to assist a participant in a particular unit, or execute a Housing Assistance Payments (HAP) contract with the landlord of a 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 landlord must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the landlord for the unit must be reasonable [24 CFR 982.305(a)]
- The landlord must be an eligible landlord, approvable by the PHA, with no conflicts of interest [24 CFR 982.306]
- For new participants only: Tenant portion of rent cannot exceed 40% of household income [24 CFR 982.305(a)]

### TENANT SCREENING

OCHA's policies for screening households are explained in Chapter 3. Per HUD's 24 CFR 982.307(a)(1), OCHA is not responsible to the landlord for participant conduct. The landlord is responsible for screening and selection of the participant.

The PHA will inform the landlord of their responsibility to screen for tenancy and their obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a)(2)].

The PHA's responsibility is to:

- Provide the participant's current and prior address to the landlord (as shown in the PHA records)
- Provide the name and address (if known to the PHA) of the landlord at the participant's current and prior address [24 CFR 982.307(b)(1)], and



- not to disclose to the landlord any confidential information provided by the participant 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(b)(4)].

### REQUESTING TENANCY APPROVAL

Once a participant finds a suitable unit with a willing landlord, the landlord and the participant request the PHA to approve tenancy by submitting two documents to the PHA (Form HUD-52517):

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

Landlords must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the participant, 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, landlords 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.

## OCHA Policy

Once a participant has found a unit, the steps to follow when seeking approval are:

- The RFTA is signed by both participant and landlord. The participant will usually have the RFTA in their moving folder. They will sign the indicated places and give it to the landlord. If for any reason the participant loses their RFTA form, please contact OCHA staff.
- The landlord will then complete their portions and submit RFTA to the PHA. Completed RFTA may be submitted by either participant or landlord as hard copy or electronically in-person, by mail, email or fax.
- If any further information is needed, OCHA Staff will be in touch with participant or landlord.

## ELIGIBLE UNITS

Participants may choose any available unit on the market in the PHA's jurisdiction, including the unit they are currently occupying. The exceptions listed in this section may apply.

## Ineligible Units

According to 24 CFR 982.352(a), the following units are not eligible under the HCV program:

- Public housing or Indian housing units;
- Units 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; or
- Units occupied by their landlord or by a person with any interest in the unit.

## PHA-Owned Units

Per 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 participant, both orally and in writing, that the participant has the right to select any eligible unit available for lease and that the participant is free to select a PHA-owned unit without any pressure or steering by the PHA.

## OCHA Policy

OCHA does not have any eligible OCHA-owned units available for leasing under the voucher program.

## Special Housing Types [24 CFR 982 Subpart M]

24 CFR 982 Subpart M requires the PHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to persons with disabilities. See Chapter 15 for specific information and policies on any of these housing types that the PHA has chosen to allow.

## Duplicative Assistance [24 CFR 982.352(c)]

A participant 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 participant, or a rent reduction because of a tax credit.



### OCHA Policy

OCHA participants may utilize one-time local subsidy in the form of Orange County's Emergency Housing Assistance program. They may not access this subsidy more than once as that might constitute ongoing (duplicative) assistance. For further financial need, participants should contact OCHA staff to inquire about further community resources.

### Housing Quality Standards (HQS)

In order to be eligible, the unit must pass HUD's Housing Quality Standards (HQS) (24 CFR 982.305 and 24 CFR 982.401). See Chapter 8 for a full discussion of the HQS standards as well as the process for HQS inspection at initial lease-up.

### Rent Reasonableness

In order to be eligible, the unit must have a reasonable rent (24 CFR 982.305 and 24 CFR 982.507). See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

### Rent Burden

Upon initial lease-up, if the gross rent of the unit exceeds the participant's payment standard, the tenant portion of rent cannot exceed 40 percent of the participant's adjusted monthly income (24 CFR 982.508). See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of participant income, participant share of rent and HAP.

## LEASE AND TENANCY ADDENDUM

The participant and the landlord must execute a written lease agreement, which is a contract between the participant and the landlord; 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 landlord [24 CFR 982.308(a)].

### Lease Form and Tenancy Addendum

The Housing Assistance Payment (HAP) contract prescribed by HUD contains the landlord's certification that the landlord uses whatever lease form they use with unassisted tenants also with assisted tenants (24 CFR 982.308).

HUD requires the Tenancy Addendum portion of the HAP contract to be added to the landlord's standard lease form. The Tenancy Addendum includes tenant protections that may not otherwise be included in the lease. If there is a conflict between the lease and the Tenancy Addendum, the Tenancy Addendum shall prevail over the lease.

### Lease Information

The lease must contain all of the required information listed below (24 CFR 982.308(d)):

- The names of the landlord and the tenant/participant
- 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 landlord
- A specification of who is responsible for each utility and appliance

### OCHA Policy

OCHA may request that all owners listed on the deed of the property sign the lease.

### Term of Assisted Tenancy

The initial term of the assisted 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.

### OCHA Policy

OCHA will follow HUD guidelines [24 CFR 982.309] stating that the PHA may approve a shorter initial lease term if the PHA determines that:

- Such shorter term would improve housing opportunities for the tenant; and
- (ii) Such shorter term is the prevailing local market practice.

During the initial term of the lease, the landlord may not raise the rent (24 CFR 982.309). Landlords must state any provisions for lease renewal in the lease. HUD has no other requirements regarding renewal extension terms ([HCV Guidebook, pg. 8-22]).

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 landlord 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 landlord 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).

### OCHA Policy

OCHA will maintain flexibility with respect to security deposits in order to increase likelihood of housing our clients.

### Separate Non-Lease Agreements between Landlord and Tenant

Landlords may not demand or accept any rent payment from the participant in excess of rent as approved by the PHA [24 CFR 982.451(b) (4)]. The landlord may not charge the tenant extra amounts for items customarily included in rent, or provided at no additional cost to unassisted tenants on the premises [24 CFR 982.510(c)].

### OCHA Policy

OCHA permits landlords 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.

The participant is not liable and cannot be held responsible under the terms of the lease for any charges in a separate

non-lease agreement. Non-payment of charges from a non-lease agreement cannot be cause for eviction or termination of tenancy.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the landlord and may be taken into consideration when determining the reasonableness of the rent for the property.

### PHA Review of Lease

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)].

### OCHA Policy

OCHA Staff will be in touch with participants and landlords if any issues are found with the lease.

### TENANCY APPROVAL

To approve the assisted tenancy, the PHA must ensure that:

- the unit is eligible;
- the unit meets HQS;
- the lease, Tenancy Addendum and lead-based paint disclosure are in order;
- the rent for the unit is reasonable;
- for initial leases, that the share of rent to be paid by the participant does not exceed 40 percent of the participant's monthly adjusted income [24 CFR 982.305(a)];
- the landlord is eligible with no conflicts of interest [24 CFR 982.306];

### OCHA Policy

OCHA will complete its determination within three (3) business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, either participant or owner must submit updated documents to OCHA.

If OCHA determines that the tenancy cannot be approved, OCHA staff will notify landlord and participant. This notification will provide the reason for denial and guidance on how to obtain an approval for the unit.

- If the tenancy is not approvable due to rent burden or rent reasonableness, OCHA will attempt to negotiate the rent with the landlord.

If OCHA is unable to approve tenancy, OCHA staff and any other connected service providers will continue to assist participants as needed with their housing search for a different unit.

If both tenant and landlord agree to alter an existing tenancy by changing lease term, unit (in same complex), or utility/appliance responsibilities, then no new RFTA will be required.

## HAP CONTRACT EXECUTION

Per 24 CFR 982.305, the Housing Assistance Payment (HAP) contract is a written agreement between the PHA and the landlord that establishes:

- Subsidy amount that PHA agrees to provide owner;
- Program requirements for landlord;
- HAP contract term, which must match the lease [24 CFR 982.451(a)(2)];
- Program funding conditions under which the PHA may execute the HAP contract;
- A time frame of no more than 60 calendar days from the beginning of the lease term for the HAP contract to be executed;
- The timeframe bounding when the PHA may make HAP payments:
  - HAP payment cannot be made 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 HAP after execution 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 HAP to the landlord.

### OCHA Policy

In order to receive payments from Orange County, the landlord must submit tax and bank documents, as specified by the county Finance Department.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

## CHANGES IN LEASE OR RENT

Changes to the lease must be agreed upon by the tenant and landlord, and then provided in writing to the PHA. The lease, including any changes, must meet all requirements stated previously in this chapter (24 CFR 982.308).

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 landlord responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- Changes in unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the participant and landlord must submit a new lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter, and a new HAP contract executed.

Where the landlord is changing the amount of the rent to landlord, the landlord must notify the PHA at least sixty (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 landlord is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the landlord 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)].

### OCHA Policy

OCHA will determine whether the requested increase is reasonable within thirty (30) calendar days of receiving the request from the landlord. The landlord and participant will be notified of the determination in writing. All rent increases will be effective on the first of the month following thirty (30) calendar days' notice to the participant.

In addition to rent reasonableness limits discussed above, OCHA will limit the rent increase amount to a contract rent that will not cause "rent burden" on the participant (defined as tenant rent portion being greater than 40% of their adjusted income).

# CHAPTER 10

## MOVING AND PORTABILITY

### A. Moving With Continued Assistance

#### B. Portability

## A. MOVING WITH CONTINUED ASSISTANCE

### ALLOWABLE MOVES

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. Participants can move if:

- The participant has a right to terminate the lease (for the landlord's breach or otherwise) if they have given a notice of termination to the landlord in accordance with the lease [24 CFR 982.354(b)(3)]. If the participant terminates the lease, they must give the PHA a copy of the termination notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the participant's unit has been terminated by mutual agreement of the landlord and the participant [24 CFR 982.354(b)(1)(ii)].
- The landlord has given the participant a notice to vacate, has commenced an action to evict the participant, or has obtained a court judgment or other process allowing the landlord to evict the participant [24 CFR 982.354(b)(2)].
- The participant or a member of the participant 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 participant or participant member [24 CFR 982.354(b)(4)]. This condition applies even when the participant has moved out of its unit in violation of the lease, with or without prior notification to the PHA, if the participant or participant 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)]. The PHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).

### OCHA Policy

OCHA has adopted Orange County Partnership to End Homelessness's emergency transfer plan, which can be found at the following link: [https://www.ocpehnc.com/\\_files/ugd/52554b\\_15678b9ba60044a19f75b4d6fff10745.pdf](https://www.ocpehnc.com/_files/ugd/52554b_15678b9ba60044a19f75b4d6fff10745.pdf)



- The PHA has terminated the HAP contract for the participant's unit due to landlord breach of contract [24 CFR 982.354(b)(1)(i)]. Please refer to Chapter 13 for further information on termination of HAP contracts due to landlord breach of contract.
- The PHA determines that the participant's current unit does not meet the HQS space standards because of an increase in participant size or a change in participant composition. In such cases, the PHA must issue the participant a new voucher, and the participant and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the participant, the PHA must terminate the HAP contract for the participant's old unit in accordance with the HAP contract terms and must notify both the participant and the landlord 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 landlord. [24 CFR 982.403(a) and (c)].

Participants and/or landlords must provide notification of lease termination to the PHA as soon as possible.

### RESTRICTIONS ON MOVES

HUD specifies two conditions under which a PHA may deny a participant permission to move and two ways in which a PHA may restrict moves by a participant [24 CFR 982.1(b)(2)].

## Denial of Permission to Move

### Insufficient Funding

The PHA may deny a participant 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)].

### Grounds for Denial or Termination of Assistance

The PHA may deny a participant permission to move if it has grounds to terminate the participant's assistance [24 CFR 982.544(e)(2)]. VAWA allows an exception to these grounds for denying or terminating assistance for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit. (Pub. L. 109- 162).

#### OCHA Policy

In determining whether to grant permission to move, OCHA will consider the criteria under federal regulations at 24 CFR 982.552(c)(1). For a list of grounds for denial or termination of assistance, and extenuating circumstances, see Chapter 3.

### Restrictions on Elective Moves

These restrictions do not apply when the participant or household member 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 participant or participant member. In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

### Request Occurs During Initial Lease Term

HUD [24 CFR 982.354(c)] regulations permit the PHA to prohibit any elective move by a participant participant during the participant's initial lease term.

### Frequent Moves

HUD regulations permit the PHA to prohibit more than one elective move by a participant during any 12-month period.

#### OCHA Policy

OCHA policy is to work with participants to protect the health or safety of a participant member (e.g., lead-based paint hazards, domestic violence, and witness protection programs), to accommodate a change in participant circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a participant has no control.

In addition, the PHA will allow exceptions to these policies for purposes of reasonable accommodation of a participant member who is a person with disabilities (see Chapter 2).

OCHA will deny a participant permission to make a requested move if the participant has been issued a Proposed Termination. If the participant has requested a hearing, the participant must go through the hearing process with the decision being to overturn the proposed termination before OCHA will approve the move.

## MOVING PROCESS

### Notification

If a participant wishes to move to a new unit, the participant must notify the PHA and the landlord before moving out of the old unit or terminating the lease on notice to the landlord [24 CFR 982.354(d)(2)]. If the participant wishes to move to a unit outside the PHA's jurisdiction under portability, the notice to the PHA must specify the area where the participant wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

### Approval

#### OCHA Policy

Once OCHA receives the Notice to Vacate and approves, they will generate and deliver a moving packet including a voucher and RFTA packet to the participant.

If the participant's next scheduled reexamination is within 90 days, OCHA will need updated income and household composition information. This means that OCHA may withhold permission to move until the participant has completed the reexamination process.

OCHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a participant does not locate a new unit within the term of the voucher and any extensions, the participant may remain in its current unit with continued voucher assistance if the landlord agrees and OCHA approves.

### Housing Assistance Payments

When a participant moves out of an assisted unit, the PHA may not make any housing assistance payment to the landlord for any month after the month the participant moves out. The landlord may keep the housing assistance payment for the month when the participant moves out of the unit [24 CFR 982.311(d)].

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

## B. PORTABILITY

### OVERVIEW

Within the limitations of the regulations and this plan, a participant or applicant has the right to use a housing choice voucher to lease a unit anywhere in the United States that lies within the jurisdiction of a PHA administering HCV [24 CFR 982.353(b)]. Moving a voucher from one PHA to another PHA is known as porting.

The receiving PHA has the option of administering the participant's voucher for the initial PHA or absorbing the participant into its own program. Under the first option, the receiving PHA provides all housing services for the participant and bills the initial PHA for the participant's housing assistance payments and the fees for administering the participant's voucher. Under the second option, the receiving PHA pays for the participant's assistance with its own program funds, and the initial PHA has no further relationship with the participant. 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].

The PHA will follow the rules and policies in Section 10.B when it is acting as the initial PHA for a participant. It will follow the rules and policies in Section 10.B when it is acting as the receiving PHA for a participant. 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)].

### INITIAL PHA ROLE

#### Allowable Moves under Portability

A participant 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 participant with the contact information for the receiving PHAs that serve the area, and the participant selects the receiving PHA. The participant must inform the initial PHA which PHA it has selected. If the participant prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the participant [24 CFR 982.255(b)].



### 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 for the same two reasons that it may deny any move by a participant: insufficient funding and grounds for denial or termination of assistance. If a PHA intends to deny a participant permission to move under portability due to insufficient funding, the PHA must notify HUD within ten (10) business days of the determination to deny the move [24 CFR 982.355(e)].

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)].

#### OCHA Policy

OCHA does not have a policy to deny portability within the first 12 months.

### Participant Families

The initial PHA must not provide portable assistance for a participant if a participant 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 participant 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)].

### Determining Income Eligibility Applicant Families

An applicant may lease a unit in a particular area under portability only if the participant is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(1)]. The participant must specify the area to which the participant wishes to move [24 CFR 982.355(c)(1)].

The initial PHA is responsible for determining whether the participant is income eligible in the area to which the participant wishes to move [24 CFR 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant participant is not income eligible in that area, the PHA must inform the participant that it may not move there and receive voucher assistance [Notice PIH 2016-09].

### Participant Families

The income eligibility of a participant is not redetermined if the participant moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

### Reexamination of Income and Composition

No new reexamination of participant income and composition is required for an applicant.

### 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.

### Voucher Issuance, Term, Extension and Expiration

An applicant has a right to portability after the participant 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. For voucher extensions and expirations, portability vouchers will be treated as all other vouchers.

To receive or continue receiving assistance under the initial PHA's voucher program, a participant that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within ninety (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 participant'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 participant'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)].

### Initial Notification to the Receiving PHA

After approving a participant'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 participant [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also

advise the participant how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

### Sending Documentation to the Receiving PHA

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Participant Portability Information, with Part I filled out [Notice PIH 2016-09]
- A copy of the participant's voucher [Notice PIH 2016-09]
- A copy of the participant's most recent form HUD-50058, Participant Report, or, if necessary in the case of an applicant participant, participant 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 participant's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

### OCHA Policy

In addition to these documents, OCHA 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 participant self-sufficiency (FSS) program
- If applicable, information related to the family's health and medical care and disability assistance expense phased-in hardship exemption, including what stage the family is in and how many months remain in that phase-in stage

OCHA will notify the participant in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

### Initial Billing Deadline

The deadline for submission of initial billing is ninety (90) days following the expiration date of the voucher issued to the participant 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 (Notice PIH 2016-09).

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.

### **OCHA Policy**

OCHA will allow an exception to this policy if the participant includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the participant by the receiving PHA.

### **Monthly Billing Payments**

If the receiving PHA is administering the participant's voucher, the receiving PHA bills the initial PHA for HAP 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 over-leasing 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.

### **OCHA Policy**

OCHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies OCHA that direct deposit is not acceptable to them.

If the initial PHA extends the term of the voucher, the receiving OCHA'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 participant, 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 participant's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the participant. 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**

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the participant 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.)

### **RECEIVING PHA ROLE**

If a participant has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the participant [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 (MTW) agencies. The receiving PHA's procedures and preferences for selection among eligible applicants do not apply to the participant, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The participant's 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 Requests**

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the participant'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)].



## Initial Contact with Participant

When a participant moves into the PHA's jurisdiction under portability, the participant is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families. The participant'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 participant 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 participant leasing a unit.

If for any reason the receiving PHA refuses to process or provide assistance to a participant under the portability procedures, the participant 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 participant as long as the requirement does not unduly delay the participant's search [Notice PIH 2016-09].

### OCHA Policy

OCHA will not require the participant to attend a briefing. OCHA will provide the participant with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the participant about the PHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. OCHA will recommend that the participant attend a full briefing.

## Income Eligibility and Reexamination

The receiving PHA does not redetermine eligibility for a portable participant 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, the receiving PHA may not delay issuing the participant a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

### OCHA Policy

For any participant moving into its jurisdiction under portability, OCHA may conduct a new reexamination of participant income and composition.

In conducting its own reexamination, OCHA can rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the participant's current circumstances; and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the participant and adjusted, if necessary, when third party verification is received.

## Voucher Issuance

When a participant moves into its jurisdiction under portability, the receiving PHA is required to issue the participant a voucher [24 CFR 982.355(c)(13)]. The participant must submit a Request For Tenancy Approval (RFTA) 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 participant's paperwork from the initial PHA if the information is in order, the participant has contacted the receiving PHA, and the participant complies with the receiving PHA's procedures [Notice PIH 2016-09].

## 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].

## Voucher Extensions

Once the receiving PHA issues the portable participant 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 participant, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a RFTA, execute a HAP contract, and deliver the initial billing to the initial PHA [24 CFR 982.355(c)(14), Notice 2016-09].

### OCHA Policy

If OCHA plans to absorb the participant, OCHA will follow the policies on voucher extension set forth in section 5.B.

## Voucher Suspensions

If the participant submits a RFTA 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 participant submits a RFTA until the date the PHA notifies the participant in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5.B).

## Notifying the Initial PHA

The receiving PHA will promptly notify the initial PHA if the participant has leased an eligible unit under the program or if the participant 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, Participant 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 Participant's Voucher.")

If an incoming portable participant 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 will refer the participant back to the initial PHA. In such a case the voucher of record for the participant 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 participant's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

## Administering a Portable Participant's Voucher

### Portability Billing

To cover assistance for a portable participant that was not absorbed, the receiving PHA bills the initial PHA for HAP and administrative fees. The amount of the housing assistance payment for a portable participant in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program [24 CFR 982.355(e)].

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.



## Initial Billing Deadline

If a portable participant's search for a unit is successful and the receiving PHA intends to administer the participant'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 participant'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 participant's form HUD-50058, Participant 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.

If the receiving PHA fails to send the initial billing by the deadline, it is required to absorb the participant 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

### Annual Reexamination

The receiving PHA must send the initial PHA a copy of a portable participant'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 participant, regardless of whether there is a change in the billing amount [Notice PIH 2016-09, HUD-52665].

### 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 participant 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 participant
- Termination of the participant from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the landlord and the participant in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than ten (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 ten (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

If the initial PHA fails to make a monthly payment for a portable participant by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing. The notice must identify the participant, 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 participant ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA [Notice PIH 2016-09].

### Overpayments

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 [Notice PIH 2016-09].

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 participant for participant 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].

### OCHA Policy

If OCHA elects to deny or terminate assistance for a portable participant, any informal review or hearing will be held in accordance with the policies in Chapter 16. OCHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. OCHA will furnish the initial PHA with a copy of the review or hearing decision.

### Absorbing a Portable Participant

The receiving PHA may absorb an incoming portable participant into its own program when the PHA executes a HAP contract on behalf of the participant 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 participant 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 participant after providing assistance for the participant 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].

Following the absorption of an incoming portable participant, the participant 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 participant under portability [24 CFR 982.355(e)(4)].

# CHAPTER 11

## REEXAMINATIONS

### A. Annual Reexaminations

### B. Interim Reexaminations

### C. Recalculating Participant Share And Subsidy Amount

## A. ANNUAL REEXAMINATIONS

### OVERVIEW

The PHA must conduct a reexamination of participant income and composition at least annually. This includes gathering and verifying current information about participant composition, income, and expenses. Based on this updated information, the participant'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 [24 CFR 982.516].

Unlike when performing an interim reexamination or at intake, at annual reexamination, the PHA must determine the income of the family for the previous 12-month period, except where the PHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a Safe Harbor income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the PHA's policies related to streamlined income determinations and the use of Safe Harbor income verifications.

### STREAMLINED ANNUAL REEXAMINATIONS

HUD permits PHAs to streamline the income determination process for participant members with fixed sources of income. While third-party verification of all income sources are obtained during the intake process and every three years after that, 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 participant, the PHA must perform third-party verification of all income sources [24 CFR 982.516(B)].

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 participant also receives income from other non-fixed sources.



Two streamlining options are available, depending upon the percentage of the participant's income that is received from fixed sources. If at least 90 percent of the participant'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 participant 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.

### OCHA Policy

OCHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. OCHA will document in the file how the determination that a source of income was fixed was made.

- If a participant member with a fixed source of income is added, OCHA will use third-party verification of all income amounts for that participant member.
- If verification of the COLA or rate of interest is not available, OCHA 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.

## SCHEDULING ANNUAL REEXAMINATIONS

The PHA must establish a policy to ensure that the annual reexamination for each participant is completed *within* a twelve (12) month period, and may require reexaminations more frequently [HCV GB p. 12-1].

### OCHA Policy

OCHA will begin the annual reexamination process 90-120 days in advance of its scheduled effective date. Generally, OCHA will schedule annual reexamination effective dates to coincide with the participant's anniversary date.

**Anniversary date** is defined as 12 months from either:

- The effective date of the participant's last annual reexamination; or
- If the participant's first year in the program, from the effective date of the participant's initial examination (admission).

If the participant moves to a new unit, OCHA will perform a new annual reexamination. OCHA 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].

### OCHA Policy

Generally, OCHA conducts the reexamination via a mail-in process, which eliminates the need for families to come into the office. OCHA can also work with participants to send reexamination documents by email or fax, and staff is available to assist clients in completing their packets either in person or by phone.

OCHA will notify the participant via mail and/or Email of the annual reexamination process. In addition to the packet itself, this notice will include instructions for completing it, and offer client assistance upon request. OCHA Staff will offer any accommodations requested as described in Chapter 3.

## CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the PHA regarding the participant's income, expenses, and composition [24 CFR 982.551(b)].

### OCHA Policy

OCHA reexamination documents include, but are not limited to, the following:

- OCHA application for continued occupancy;
- Authorization for the Release of Information/Privacy Act Notice;
- Supporting documentation related to the participant's income, expenses, and participant composition.

Generally OCHA conducts the reexamination process by mailing out a full packet, and requesting that the client return it to us however is most convenient, whether by mail or dropbox. OCHA Staff will offer any accommodations requested (as described in Chapter 3) to assist clients in completing the reexamination process. This includes emailing the packet instead of mailing, conducting in-person interviews, and assisting clients in completing the packet over the phone.

HUD requires that documents needed to verify income and expenses such as paystubs and bank statements be dated less than sixty (60) days prior to the date the paperwork is returned to OCHA. For a full list of verification documents, please refer to Chapter 7. In cases where income and asset information is reported quarterly or semi-annually by a third party, the most recent statement will be acceptable.

If OCHA does not receive requested reexamination materials by the date specified on the original notice, OCHA will send two reminder notices by mail, every 30 days. If OCHA receives partial materials, they will send a "Need Further Info" notice to the participant indicating what additional information is required.

If OCHA does not receive requested documents by the date specified on the 2nd reminder notice, they will initiate contact by phone call or home visit. OCHA will continue to call and visit the home until we can make contact. If OCHA is not able to make contact by a month after the client's anniversary date, OCHA will mail a Notice of Proposed Termination and Request for Informal Hearing.

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].

The information provided by the participant generally must be verified in accordance with the policies in Chapter 7. Unless the participant reports a change, or the agency has reason to believe a change has occurred in information previously reported by the participant, 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

### ***DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS***

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 or is considered a **vulnerable youth** in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility [24 CFR 982.552(B)(5)].

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.

### ***CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION***

The PHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the PHA uses a streamlined income determination as indicated in Chapter 7 of this policy. The PHA may also use Safe Harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy. [24 CFR 5.609(c)(2) and Notice PIH 2023-27]

Except when using streamlined or Safe Harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with PHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The PHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for PHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

**Step 1:** The PHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the PHA's annual reexamination paperwork.



**Step 2:** The PHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed within the last reexamination cycle and there are no additional changes, the PHA must use the annual income from the interim to determine the family's total annual income. The PHA may use verification obtained from the interim for this step.
- If the PHA did not perform an interim or there have been changes since the last reexamination, the PHA moves to Step 3.

**Step 3:** If there were changes in annual income not processed by the PHA since the last reexamination, the PHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the PHA may use documentation of prior-year income to calculate the annual income. For example, the PHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the PHA, for example:
  - Year-end statements
  - Paycheck with year-to-date amounts
  - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the PHA notes discrepancies between EIV and what the family reports, the PHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 11-1 provides detailed examples of how the PHA calculates income from different sources at annual reexamination using the above method.

### PHA Policy

When income is calculated using a streamlined income determination or Safe Harbor determination from a means-tested federal public assistance program in accordance with PHA policies in Chapter 7, the above is not applicable. However, where the family disagrees with the PHA or other agency's determination of income or the PHA has other reason to use third-party verification in these circumstances, then the above will apply.

### EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

### OCHA Policy

In general, a change in the participant share of the rent that results from an annual reexamination will take effect on the participant's anniversary date. This is always true for rent portion decreases and usually true for increases, although for increases the participant will always be notified at least thirty (30) days in advance. This notice may result in a delay of rent portion change after the anniversary date. Details regarding effective dates of increases for specific situations are outlined below:

- If less than thirty (30) days remain before the scheduled effective date of a rent portion increase, the increase will take effect on the first of the month following the end of the thirty (30) day notice period.
- If a participant moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no thirty (30) day notice is required.
- If OCHA chooses to schedule an annual reexamination for completion prior to the participant's anniversary date for administrative purposes, the effective date will be determined by OCHA, but will always allow for the 30-day notice period if an increase is involved.

## B. INTERIM REEXAMINATIONS

### OVERVIEW

Participant circumstances may change between annual reexaminations. HUD regulations permit the PHA to conduct interim reexaminations of income or household 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 participant must report, HUD regulations permit the participant to request an interim determination if other aspects of the participant's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the participant's request [24 CFR 982.516].

### CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The PHA must adopt policies that describe when and under what conditions the participant must report changes in household composition.

#### 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 participant is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

#### 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 participant 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 participant 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 HQS space standards (see Chapter 8), the PHA must issue the participant a new voucher, and the participant and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the participant, the PHA must terminate the participant's HAP contract in accordance with its terms [24 CFR 982.403].

#### OCHA Policy

Families must request OCHA 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 thirty (30) consecutive days or ninety (90) cumulative days within a twelve (12) month period and no longer qualifies as a "guest" (See "Guest" section in Chapter 3). Requests must be made in writing and approved by OCHA prior to the individual moving into the unit.

OCHA will notify the participant in writing of its decision to approve or deny the new family or household member. OCHA will make its determination within fourteen (14) business days of receiving all information required to verify the individual's eligibility.

#### Departure of a Participant or Household Member

Families must promptly notify the PHA if any participant member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the participant 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. The PHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

#### OCHA Policy

OCHA requests that participants report departures of family or household members to OCHA within ten (10) business days.

### CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled when there are changes to participant income or expenses.

A family may request an interim determination of family income for any change since the last determination. However, the PHA may decline to conduct an interim reexamination if the PHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The PHA may set a lower threshold in PHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the PHA from setting a dollar-figure threshold.



However, while the PHA has some discretion, HUD requires that the PHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the PHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then PHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

### PHA Policy

The PHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

## Interim Increases

### Increases Less than 10 Percent

PHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income. [24 CFR 982.516(c)(3) and Notice PIH 2023-27]

### Increases 10 Percent or Greater

PHAs must conduct an interim reexamination of family income when the PHA becomes aware that the family's adjusted income has changed by an amount that the PHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- PHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and

- PHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a PHA has the discretion whether to consider a subsequent increase in earned income.

### PHA Policy

When a family reports an increase in their earned income between annual reexaminations, the PHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The PHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The PHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the PHA policies in Chapter 14.

## Concurrent Increases in Earned and Unearned Income

When the family reports an increase in both earned and unearned income at the same time, the PHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The PHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the PHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the PHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the PHA would refer to PHA policy to determine whether an interim was required. [Notice PIH 2023-27]

## Cumulative Increases

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold,

at which point the PHA must conduct an interim reexamination in accordance with PHA policy.

## Family Reporting

The PHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 982.516(d)].

PHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the PHA may establish policies requiring that families report all changes in income and household composition, and the PHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When the PHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed [Notice PIH 2023-27].

### PHA Policy

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify the PHA of changes either orally or in writing, including email. If the family provides oral notice, the PHA may also require the family to submit the changes in writing, including email.

Within 10 business days of the family reporting the change, the PHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, the PHA will note the information in the tenant file but will not conduct an interim reexamination. The PHA will send the family written notification (which may be emailed) within 10 business days of making this determination informing the family that the PHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, the PHA will determine the documentation the family will be required to submit based on the type of change reported and PHA policies in Chapter 7. The PHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the

PHA. This time frame may be extended for good cause with PHA approval. The PHA will accept required documentation by mail, email, fax, or in person. The PHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

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.

## EFFECTIVE DATES

### Changes Reported Timely

If the family reports a change in family income or composition timely in accordance with PHA policies [24 CFR 982.516(e) and Notice 2023-27]:

- For rent increases, the PHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.
- Changes Not Reported Timely [Notice PIH 2023-27]
- If the family failed to report a change in family income or composition timely in accordance with PHA policies:
- For rent increases, the PHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the PHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the PHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. PHAs may choose to establish conditions or requirements for when such a retroactive application would apply. PHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.



## C. RECALCULATING PARTICIPANT SHARE AND SUBSIDY AMOUNT

### OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the PHA must recalculate the participant share of the rent and the subsidy amount, and notify the participant and landlord of the changes [24 CFR 982.516(d)(2), HCV GB 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.

### CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the participant 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.

#### Payment Standards

The participant share of the rent and HAP calculations must use the correct payment standard for the participant, taking into consideration the participant 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 (24 CFR 982.505).

When the PHA changes its payment standards or the participant'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, during the term of a HAP contract, the PHA is not required to reduce the payment standard as the HAP contract remains in effect. At the participant's second annual reexamination, the PHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the PHA's policy on decreases in the payment standard).
- If the participant moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the participant remains in place) the current payment standard applicable to the participant will be used when the new HAP contract is processed.

In applying a retroactive change in rent as the result of an interim reexamination, the PHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

#### PHA Policy

In general, when the family fails to report a change in income or family composition timely, and the change would lead to a rent decrease, the PHA will apply the decrease the first of the month following completion of the interim reexamination.

However, the PHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to PHA management operations. The PHA will decide to apply decreases retroactively on a case-by-case basis.

When the PHA applies the results of interim decreases retroactively, the PHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with PHA policies.

The PHA will also clearly communicate the effect of the retroactive adjustment to the owner.

## Subsidy Standards

If there is a change in the participant unit size that would apply to a participant during the HAP contract term, either due to a change in participant composition, or a change in the PHA's subsidy standards (see Chapter 5), the new participant unit size must be used to determine the payment standard amount for the participant at the participant's first annual reexamination following the change in participant unit size [24 CFR 982.505(c)(4)].

## Utility Allowances

The participant share of the rent and HAP calculations must reflect any changes in the participant's utility arrangement with the landlord, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established [24 CFR 982.517(d)].

When there are changes in the utility arrangement with the landlord, 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 [HCV GB, p. 18-8].

### OCHA Policy

Revised utility allowances will be applied to a participant's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

## NOTIFICATION OF NEW PARTICIPANT SHARE AND HAP AMOUNT

The PHA must notify the landlord and participant of any changes in amount of 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 participant share of the rent
- The amount and effective date of the new tenant rent to landlord

The participant 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).

### OCHA Policy

In addition to the above information, the OCHA notice will also include any changes to utility reimbursement



## DISCREPANCIES

During an annual or interim reexamination, the PHA may discover inaccurate past information. When inaccurate information results in the overpayment or underpayment of subsidy, corrections will be made in accordance with the policies in Chapter 14.

## D. NON-INTERIM REEXAMINATION TRANSACTIONS

Families may experience changes within the household that do not trigger an interim reexamination under PHA policy and HUD regulations but which HUD still requires the PHA to report to HUD via Form HUD-50058. These are known as non-interim reexamination transactions. In these cases, PHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the childcare expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);

- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12- month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

PHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

# CHAPTER 12

## TERMINATION OF ASSISTANCE AND TENANCY

### A. Termination Of Assistance By PHA

### B. Termination Of Tenancy By The Landlord

## A. TERMINATION OF ASSISTANCE BY PHA

### OVERVIEW OF GROUNDS FOR TERMINATION OF ASSISTANCE

HUD requires the PHA to terminate assistance for certain actions and inactions of the participant and when the participant no longer requires assistance due to increases in participant income. HUD permits the PHA to terminate assistance for certain other actions or inactions of the participant. In addition, a participant may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

### PARTICIPANT NO LONGER REQUIRES ASSISTANCE

As a participant's income increases, the amount of the housing assistance payment (HAP) decreases. If the amount of assistance provided by the PHA is reduced to zero, the participant's assistance terminates automatically 180 days after the last HAP payment [24 CFR 982.455].

#### OCHA Policy

If a participant receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the landlord, the participant must notify OCHA of the change and request an interim reexamination before the expiration of the 180-day period.

### PARTICIPANT CHOOSES TO TERMINATE ASSISTANCE

The participant may request that the PHA terminate HAP on behalf of the participant at any time.

#### OCHA 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 participant's assistance, OCHA will follow the notice requirements in Section 12.A.



### MANDATORY TERMINATION OF ASSISTANCE

HUD requires the PHA to terminate assistance in the following circumstances.

#### Eviction

The PHA must terminate assistance whenever a participant is evicted from a unit assisted under the HCV program for a serious violation of the lease. As discussed further in Section 12.B, 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 [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)].

#### OCHA Policy

A participant will be considered **evicted** if the participant moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a participant moves after the landlord has given the participant 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 OCHA will determine whether the participant has committed serious violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in this section. Upon consideration of such factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

**Serious lease violations**  include extreme and intentional destruction of property, and violence, physical threats or intimidation. Evictions due to criminal activity or creating unsafe conditions for landlord and/or neighbors will be considered on a case-by-case basis.

- Examples of extreme and intentional property damage include ripping out wiring/piping, toppling appliances, and ripping out fixtures or doors.
- Damages such as a kitchen fire, broken appliances, and normal wear and tear (especially due to health equipment) will not generally be considered “extreme and intentional” property damage.
- Violence, **physical threats or intimidation** is defined as threatening or perpetrating violent or abusive behavior toward OCHA personnel, landlord or neighbors.
  - **Abusive or violent behavior** 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.

### Failure to Provide Consent

The PHA must terminate assistance if any participant 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 [24 CFR 982.552(b)(3)].

### Failure to Document Citizenship

The PHA must terminate assistance if:

- Participant fails to submit required documentation within the required timeframe concerning any participant member’s citizenship or immigration status;
- Participant 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 participant; or
- Household 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 [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)].

- Such termination must be for a period of at least twenty-four (24) months. This does not apply to ineligible noncitizens already in the household where the participant’s assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

### Failure to Disclose and Document Social Security Numbers

The PHA must terminate assistance if a participant fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number [24 CFR 5.218(c), Notice PIH 2012-10].

However, if the participant is otherwise eligible for continued program assistance, and the PHA determines that the participant’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 participant’s control, the PHA may defer the participant’s termination and provide the opportunity to comply with the requirement within a period not to exceed ninety (90) calendar days from the date the PHA determined the participant to be noncompliant.

### OCHA Policy

OCHA will defer the participant’s termination and provide the participant with the opportunity to comply with the requirement for a period of ninety (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 participant, 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

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 [24 CFR 982.553(b)(1)(ii)].

### Lifetime Registered Sex Offenders

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 [Notice PIH 2012-28].

In this situation, the PHA must offer the participant the opportunity to remove the ineligible participant member from the household. If the participant 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

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 [24 CFR 982.552(b)(5) and FR 4/10/06].

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 Participant Member

The PHA must immediately terminate program assistance for deceased single member households [24 CFR 982.311(d) and Notice PIH 2010-9].

## MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

### Mandatory Policies

HUD [24 CFR 982.553(b) and 982.551(l)] 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 or alcohol use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the participant's obligation not to engage in any drug-related criminal activity
- Any household member has violated the participant's obligation not to engage in violent criminal activity

### Use of Illegal Drugs and Alcohol Abuse

#### OCHA Policy

OCHA may terminate a participant's assistance if any household member is currently engaged in any use of alcohol or other drugs, or has a pattern of alcohol or other drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

In making its decision to terminate assistance, OCHA will consider alternatives as described later in this section. 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

**Drug** means a controlled substance as defined in section 102 of the Controlled Substances Act (24 CFR 5.100, 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.

#### OCHA Policy

OCHA may terminate a participant's assistance if any household member has violated the participant's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

In making its decision to terminate assistance, OCHA will consider alternatives as described later in this section. 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

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.B, 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 [24 CFR 982.552(c), 24 CFR 5.2005(c)].

Additionally, per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance to a participant due to the participant's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].

## OCHA Policy

OCHA will terminate a participant's assistance if:

- A participant commits extreme and intentional property damage to their unit
  - Examples of extreme and intentional property damage include ripping out wiring/piping, toppling appliances, and ripping out fixtures or doors.
  - Damages such as a kitchen fire, broken appliances, and normal wear and tear (especially due to health equipment) will not generally be considered "extreme and intentional" property damage.
  - It will be considered 'extreme and intentional' property damage if a participant is directly involved with more than one (1) damage reimbursement payment (e.g. through OCHA's 2024 "Risk Mitigation" program) to at least two (2) separate landlords.
- A participant has engaged in or threatened violent or abusive behavior toward OCHA personnel, landlord, maintenance workers or neighbors.
  - **Abusive or violent behavior** 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.

OCHA may terminate a participant's assistance if the participant has failed to comply with any family obligations under the program. The Family Obligations are (also listed in Exhibit 12.1):

### A. The family **Must**:

1. Supply any information that the Housing Authority (HA) or HUD determines to be necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.

3. Supply any information requested by the HA to verify that the family is living in the unit or information related to family absence.
4. Promptly notify the HA in writing when the family is away from the unit for an extended period in accordance with HA policies.
5. Allow the HA to inspect the unit at reasonable times and after reasonable notice.
6. Notify both the HA and the Owner in writing before moving out of the unit or terminating the lease.
7. Use the assisted unit for the residence by the family. The unit must be the family's only residence.
8. Promptly notify the HA in writing of the birth, adoption, or court-awarded custody of a child.
9. Request HA approval in writing to add any family member as an occupant of the unit. Any person staying at the premises more than thirty (30) consecutive days or ninety (90) cumulative days within a twelve (12) month period shall not be considered a guest and **MUST** be reported to the Housing Authority by the tenant.
10. Promptly notify the HA in writing if any family member no longer lives in the unit.
11. Give the HA a copy of any owner issued eviction notice.
12. Pay utility bills and supply appliances that the owner is not required to supply under the lease.

B. Any information the family supplies must be true and complete.

### C. The family **Must NOT**:

1. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).
2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
4. Engage in 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.

- a. 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. (24 CFR Sec 5.100);
  - 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. (24 CFR Sec 5.100).
  - c. In making its determination as to whether drug-related criminal activity or violent criminal activity occurred, the issue will be whether the preponderance of evidence indicates that a family has engaged in such activity, regardless of whether the family member has been arrested or convicted. (24 CFR 982.553(c)).
5. Engage in or threaten violent or abusive behavior toward OCHA personnel including its employees, contractors, subcontractors, or agents.
    - a. Violent or abusive behavior 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.
    - b. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
  6. Sublease or let the unit or assign the lease or transfer the unit.
  7. Receive HCV tenant-based or Project-based 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.
  8. Damage the unit or premises (other than damages from ordinary wear and tear) or permit any guest(s) to damage the unit or premises.
  9. Own or have any interest in the unit (other than in a cooperative, or owner of a manufactured home leasing a manufactured home space.
  10. Receive housing choice voucher program housing 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.

11. 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.

In making its decision to terminate assistance, OCHA will consider alternatives and other factors as described in Section 12.B. Upon consideration of such alternatives and factors, OCHA may, on a case-by-case basis, choose not to terminate assistance.

### Participant Absence from the Unit

The participant may be absent from the unit for brief periods. The PHA must establish a policy on how long the participant may be absent from the assisted unit. However, the participant 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 household is residing in the unit [24 CFR 982.312].

### OCHA Policy

If the participant is absent from the unit for more than 180 consecutive calendar days, the participant's assistance will be terminated. Notice of termination will be sent in accordance with later sections of this chapter.

### Insufficient Funding

The PHA may terminate assistance 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 [24 CFR 982.454].

### OCHA Policy

OCHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If OCHA determines there is a shortage of funding, prior to terminating any assistance, OCHA will determine if any other actions can be taken to reduce program costs.

In the event that OCHA decides to stop issuing vouchers as a result of a funding shortfall, and OCHA is not assisting the required number of special purpose vouchers, OCHA will resume issuing vouchers in the following priority:

1. Special Purpose Voucher Families, e.g., Veterans Affairs Supportive Housing (VASH) families, Emergency Housing Voucher (EHV) participants, Stability Voucher (SV) participants, Foster Youth to Independence (FYI) participants, and Project-Based Voucher contracts, if applicable;

2. Transfer Waiting List
3. New Applicant Waiting List .

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, OCHA will terminate assistance as a last resort.

Prior to terminating any assistance, OCHA will inform the local HUD field office. OCHA will terminate the minimum number needed in order to reduce HAP costs to a level within the PHA's annual budget authority.

If OCHA must terminate assistance due to insufficient funding, the last HAP contracts to be terminated will be families comprising the required number of special purpose vouchers (as applicable):

- Veteran's Affairs Supportive Housing (VASH);
- Emergency Housing Vouchers (EHV)
- Stability Vouchers (SV)
- Foster Youth to Independence (FYI);
- Project Based Voucher (PBV) Contracts.

## **METHOD OF TERMINATION**

According to [24 CFR 982.552(A)(3)], termination of assistance for a participant may include any or all of the following:

- Terminating HAP 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.

## **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)].

### **Consideration of Circumstances**

The PHA is permitted, but not required, to consider all relevant circumstances when determining whether a participant's assistance should be terminated [24 CFR 982.552(c)(2)(i)].



## **OCHA Policy**

OCHA understands that the effects of the U.S. criminal justice system are experienced disproportionately by Black people and other People of Color (POC). As such, a record of arrest will not be used as a basis for denial. Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property.

OCHA 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 participant who were not involved in the action or failure to act
- Whether the person committing the violation is a minor or a person with disabilities or (as discussed further in Section 12.A) 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 participant's recent history and the likelihood of favorable conduct in the future

## **Reasonable Accommodation**

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

## **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)].

## TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING

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.H 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 landlords 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 participant 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 participant 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 participant members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

### Limitations on VAWA Protections

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)]

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. 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)].

### OCHA 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, OCHA will use the same procedure as detailed for denial of assistance as discussed in Chapter 3.C. Other VAWA guidelines are discussed in Chapter 16.H.

## Terminating the Assistance of a Domestic Violence Perpetrator

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 participant 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 a landlord against an individual participant 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 participant [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

If the perpetrator remains in the unit, the PHA continues to pay the landlord until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the landlord bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

### OCHA Policy

OCHA will accept a court-issued Protective Order (P.O.) as determination of “perpetrator” status, but will consider other evidence that disputes the P.O.

In a case in which both parties are registered on the HCV household and the household splits up, the voucher will stay with the household member who is determined to have “victim” status.

## TERMINATION NOTICE

HUD regulations require PHAs to provide written notice of termination of assistance to a participant only when the participant is entitled to an informal hearing.

### OCHA Policy

If a participant’s assistance is terminated, OCHA will send a written notice of termination to the participant and to the landlord. OCHA will also send a form HUD-5382 and form HUD-5380 to the participant with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least thirty (30) calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other OCHA policies, or the circumstances require.

When OCHA notifies a landlord that a participant’s assistance will be terminated, OCHA may advise the landlord of his/her right to offer the participant a separate, unassisted lease.

If a participant whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the participant must meet the additional HUD and PHA notice requirements discussed in Section 16.C of this plan. VAWA 2013 expands notification requirements to require PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household’s housing benefits.

### OCHA Policy

OCHA will request in writing that a participant member wishing to claim protection under VAWA notify the PHA within fourteen (14) business days.

Other notice requirements apply in two situations:

- If a criminal record is the basis of a participant’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 participant’s termination, as discussed in Section 12.A, the special notice requirements in Section 16.C must be followed.

## B. TERMINATION OF TENANCY BY THE LANDLORD

### GROUNDS FOR LANDLORD TERMINATION OF TENANCY

Termination of an assisted tenancy is a matter between the landlord and the participant; the PHA is not directly involved. However, the landlord has some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of program assistance [24 CFR 982.310, 24 CFR 5.2005(c), Form HUD52641-A, Tenancy Addendum].

During the term of the lease, the landlord 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 landlord is permitted to terminate the participant'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.B). 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 landlord is not a violation of the lease between the participant and the landlord.

#### Violation of Federal, State, or Local Law

The landlord is permitted to terminate the tenancy if a participant 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 landlord may terminate tenancy during the term of lease if any covered person—meaning any member of the household, 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.A).

The landlord 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 landlord 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 landlord may terminate tenancy and evict by judicial action a participant for criminal activity by a covered person if the landlord 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 landlord may not terminate the tenancy for “other good cause” unless the landlord is terminating the tenancy because of something the participant 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 landlord includes:

- Failure by the participant to accept the offer of a new lease or revision
- The landlord’s desire to use the unit for personal or participant 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 landlord may give the participant notice at any time, in accordance with the terms of the lease.

## EVICITION

The landlord’s termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105. An landlord’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.A)

The landlord 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 landlord has given this notice, and the notice must be given at or before commencement of the eviction action [24 CFR 982.310(E) AND (F) and Form HUD-52641-A, Tenancy Addendum].

The notice of grounds may be included in, or may be combined with, any landlord eviction notice to the tenant. Landlord 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 landlord may only evict the tenant from the unit by instituting a court action. The landlord must give the PHA a copy of any eviction notice at the same time the landlord notifies the participant. The participant is also required to give the PHA a copy of any eviction notice (see Chapter 5).

## EFFECT OF TENANCY TERMINATION ON 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 participant can move with continued assistance (see Chapter 10 and Exhibit 12.1).

# CHAPTER 13

## LANDLORDS

### A. Landlords In The HCV Program

### B. Housing Assistance Payment (HAP) Contracts

## INTRODUCTION

The term “owners” 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. While HUD uses the term “owner,” in this Administrative Plan, Orange County Housing Authority (OCHA) refers to owners as “landlords.”

Landlords 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.

## A. LANDLORDS IN THE HCV PROGRAM

### LANDLORD RECRUITMENT AND RETENTION

#### 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 landlords, representing all types and ranges of affordable housing in the PHA’s jurisdiction, are willing to participate in the HCV program [HCV GB, PP. 2-4 TO 2-6].

To accomplish this objective, PHAs will identify and recruit new landlords to participate in the program.

#### OCHA Policy

When possible, OCHA will employ staff specifically assigned to landlord outreach.

#### Retention

In addition to recruiting landlords to participate in the HCV program, the PHA will also provide the kind of customer service that will encourage participating landlords to remain active in the program.



#### OCHA Policy

All OCHA activities that may affect a landlord’s ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for landlords.

OCHA will provide landlords with materials that explain the program, including HUD and PHA policies and procedures. OCHA will help all landlords succeed through activities such as:

- Landlord briefing sessions and training programs;
- Explaining the inspection process, and providing an inspection resource manual and other material about HUD Housing Quality Standards upon request;
- Providing a web-based landlord property listing service.

### BASIC HCV PROGRAM REQUIREMENTS

HUD requires the PHA to assist families in their housing search by providing the participant with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the participant, or to help the participant find a unit. Although the PHA cannot maintain a list of landlords that are pre-qualified to participate in the program, landlords may indicate to the PHA their willingness to lease a unit to an eligible HCV participant, or to help the HCV participant find a unit [24 CFR 982.301(b)(11)].

## OCHA Policy

OCHA will maintain an electronic listing of willing landlords on its website and provide this listing to the HCV participant as part of the information briefing packet.

When a participant approaches a landlord to apply for tenancy, the following steps occur:

- The landlord screens the participant just as they would with any potential unassisted tenant.
  - The PHA has no liability or responsibility to the landlord or other persons for the participant's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant participant screening policies and process.
- The participant and landlord jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517).
- The PHA will qualify the landlord to participate in the program [24 CFR 982.306]. Landlord qualifications are discussed later in this chapter.
- The PHA will determine eligibility of the selected unit [24 CFR 982.305(a)]. See chapter 9 for more detail on unit eligibility policies and process.
- The PHA will determine Housing Quality Standards (HQS) compliance of the selected unit will [24 CFR 982.305(a)].
- The PHA will determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.
- The PHA will ensure that the participant share does not exceed 40 percent of the participant's monthly adjusted income [24CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of participant income, participant share of rent and Housing Assistance Payment (HAP).
- The landlord will submit a signed 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.
- The PHA will determine that the lease complies with all program requirements [24 CFR 982.308]. Landlords are encouraged to use their standard leases when renting to an assisted participant. See chapter 9 for a discussion of the lease and tenancy addendum, including lease terms and provisions.
- The PHA and the landlord will execute a HAP Contract (Form HUD-52641). See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

## LANDLORD RESPONSIBILITIES

The basic landlord responsibilities in the HCV program are outlined in the regulations as follows [24 CFR 982.452]:

- Complying with all of the landlord's obligations under the HAP contract and lease
- Performing all management and rental functions for the assisted unit, including:
  - Selecting a voucher-holder to lease the unit,
  - Deciding if the participant is suitable for tenancy of the unit,
  - Complying with equal opportunity requirements
  - Collecting the security deposit, tenant rent, and any charges for unit damage
  - Enforcing tenant obligations under the dwelling lease
  - Paying for utilities and services that are not the responsibility of the participant 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]
- Maintaining the unit in accordance with HQS
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV participant (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

## LANDLORD QUALIFICATIONS

The PHA does not formally approve a landlord 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 landlord behavior, conflict of interest, or other landlord-related issues. No landlord has a right to participate in the HCV program [24 CFR 982.306(e)].

### Landlords Barred from Participation

The PHA will not approve the assisted tenancy if the PHA has been informed that the landlord 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 landlord violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending [24 CFR 982.306(a) and (b)].

## Leasing to Relatives

The PHA will not approve a tenancy if the landlord is the parent, child, grandparent, grandchild, sister, or brother of any member of the participant. The PHA may make an exception as a reasonable accommodation for a participant member with a disability. The landlord is required to certify that no such relationship exists. This restriction applies at the time that the participant receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of landlords and families that are related may continue, but any new leases or contracts for these families may not be approved [24 CFR 982.306(d), HCV GB p. 11-2].

## Conflict of Interest

The PHA will 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 [24 CFR 982.161; HCV GB p. 8-19]:

- 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 will submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the PHA will include the following [HCV GB 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 participant, 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 participant 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.

## Landlord Actions That May Result in Denial of a Tenancy Request

HUD regulations permit the PHA to deny a request for tenancy for various actions and inactions of the landlord [24 CFR 982.306(c)].

If the PHA denies a request for tenancy because a landlord is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the landlord's properties unless the landlord has violated the HAP contract for those units [HCV GB p. 11-4].

## OCHA Policy

OCHA may deny a request for tenancy if any of the following are true:

- The landlord has violated obligations under a HAP contract (42 U.S.C. 1437f);
- The landlord has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The landlord has a history of non-compliance with HQS for any subsidized units;
- The landlord has a history of code enforcement violations;
- A foreclosure has been filed on the property.

If OCHA refuses to approve the RFTA, landlords may request a review of the decision. To request an informal review, landlords will follow applicant procedures as outlined in Chapter 16.B.



## NON-DISCRIMINATION

The landlord will 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 (HAP Contract – Form HUD-52641).

OCHA expects landlords to cooperate 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.

### OCHA Policy

In addition to the above list, OCHA will take all available actions to ensure landlords do not discriminate based on sexual orientation or gender identity.

## B. HOUSING ASSISTANCE PAYMENT (HAP) CONTRACTS

### OVERVIEW

The HAP contract represents a written agreement between the PHA and the landlord of the dwelling unit occupied by a HCV assisted participant. The contract spells out the landlord'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 landlord on behalf of the participant approved by the PHA to occupy the unit.

The PHA uses HAP contracts for all HCV 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.

### HAP CONTRACT CONTENTS

The HAP contract format is required by HUD (HAP Contract, Form HUD-52641) and has three parts: Part A, B and C. See Exhibit for most current form.

Part A of the contract includes basic contract information and signatures [HCV GB, 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 landlord 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 a landlord 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 landlord (e.g., upon mailing by the PHA or actual receipt by the landlord).

### OCHA Policy

OCHA shall deem HAP payments as *“received”* when OCHA makes the direct deposit transaction, or three (3) days after physical checks are mailed.

Part B is the body of the contract. It describes in detail program requirements affecting the landlord and landlord 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.

Part C of the contract is 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 landlord. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## HAP CONTRACT PAYMENTS

### General

During the term of the HAP contract, the PHA will make HAP payments to the landlord 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 pro-rated 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 will notify the landlord and the participant in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the participant is residing in the unit.

The monthly HAP payment by the PHA is credited toward the monthly rent to landlord under the participant's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to landlord as specified in the lease.

The participant is not responsible for the HAP payment, and the PHA is not responsible for the participant share of rent.

The participant's share of the rent cannot be more than the difference between the rent to landlord and the HAP payment. 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 landlord receives any excess HAP from the PHA, they should communicate with the PHA to set up repayment of funds. If the PHA determines that the landlord 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 landlord, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on landlord reimbursement of HAP overpayments.

### Landlord Certification of Compliance

Unless the landlord complies with all provisions of the HAP contract, the landlord is not entitled to receive HAP under the HAP contract. By endorsing the monthly check or receiving direct deposit from the PHA, the landlord certifies compliance with the terms of the HAP contract [HAP Contract – Form HUD-52641].



### Late HAP Payments

The PHA is responsible for making HAP payments promptly, 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 [24 CFR 982.451(a)(5)].

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 landlord's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the landlord charges the assisted participant for late payment of the participant'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 a landlord breach of the HAP contract [HCV GB p. 11-7].

### OCHA Policy

When HAP payments are late by the above definition, OCHA will provide landlords with a form to ensure that all three criteria are met before paying a late fee of 5% (in accordance with NC state law).

### Termination of HAP Payments

The PHA will continue paying HAP to the landlord in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated [24 CFR 982.311(b)].

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the landlord has initiated eviction proceedings against the participant and the participant continues to reside in the unit, the PHA will continue to pay HAP to the landlord until the landlord has obtained a court judgment or other process allowing the landlord to evict the tenant.

### **OCHA Policy**

OCHA will refer clients under threat of eviction to their Eviction Diversion Program, in addition to seeking other sources of payment for arrears and any other permitted action that may help the tenant avoid formal eviction.

The landlord will inform OCHA of the initiation of eviction proceedings against the participant and the obtaining of a court judgment or other process allowing eviction, in addition to providing copies of the notices. The landlord will also inform OCHA of the exact date of move-out, whether before or after the eviction.

### **BREACH OF HAP CONTRACT**

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. Any of the following actions by the landlord constitutes a breach of the HAP contract [24 CFR 982.453]:

- If the landlord violates the HAP contract including failure to maintain HQS
- If the landlord has violated any obligation under any other HAP contract
- If the landlord 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 landlord has failed to comply with the regulation for the applicable program; or if the landlord has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the landlord has engaged in drug-related criminal activity
- If the landlord has committed any violent criminal activity

The PHA rights and remedies against the landlord under the HAP contract include recovery of any HAP overpayment, suspension of HAP, 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 will notify the landlord of its determination and provide in writing the reasons for the determination. The notice may require the landlord to take corrective action by an established deadline. The PHA will provide the landlord with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

### **HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the lease [24 CFR 982.451(a)(2)]. The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV GB pp.11-4 and 11-5, pg. 15-3]:

- The landlord or the participant terminates the lease;
- The lease expires;
- The PHA terminates the HAP contract;
- The PHA terminates assistance for the participant;
- The participant moves from the assisted unit. In this situation, the landlord is entitled to keep the housing assistance payment for the month when the participant moves out of the unit.
- 180 calendar days have elapsed since the PHA made the last housing assistance payment to the landlord;
- The participant 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.

### **OCHA Policy**

OCHA may elect to terminate the HAP contract. Any such termination would mean solely the end of a participant's tenancy in a unit, not their participation in the program. OCHA may terminate a HAP contract in each of the following situations:

- The unit does not meet HQS size requirements due to change in household composition [24 CFR 982.403] – see chapter 8;
- The unit does not meet other HQS standards [24 CFR 982.404] – see chapter 8;
- The landlord breaches the HAP contract [24 CFR 982.453(b)] – see Section 13.B; or
- Terminations subject to VAWA.

If the PHA terminates the HAP contract, the PHA will give the landlord and the participant written notice. The notice will 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 GB pg.15-4].

### **OCHA Policy**

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which OCHA gives written notice to the landlord. The landlord is not entitled to any HAP after this period, and will return to OCHA any HAP received after this period.

If the participant 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 participant 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 participant moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### ***CHANGE IN OWNERSHIP/ASSIGNMENT OF HAP CONTRACT***

The PHA must determine if a HAP contract can be assigned to a new landlord. A landlord under a HAP contract will notify the PHA in writing prior to a change in the legal ownership of the unit. The landlord will supply all information as requested by the PHA (HUD-52641).

Prior to approval of assignment to a new landlord, the new landlord will agree to be bound by and comply with the HAP contract. The agreement between the new landlord and the former landlord will be in writing and in a form that the PHA finds acceptable. The new landlord will provide the PHA with a copy of the executed agreement.

# CHAPTER 14

## PROGRAM INTEGRITY

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.

### ERRORS AND FRAUD

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with information to prevent errors. 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," and retain a signed acknowledgement on file.

### Quality Control and Analysis of Data

Under the Section Eight 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).

### 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.

### When and How the PHA Will Evaluate

#### OCHA Policy

OCHA will review all information from any source to determine if any further action is needed for potential program violations by participants, landlords or OCHA. Additionally, OCHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

For each investigation OCHA will determine and notify the relevant party of:

- (1) Whether an error or fraud has occurred,



- (2) A description of the error or fraud,
- (3) The basis on which OCHA determined the error or fraud,
- (4) Whether and how much money is owed to OCHA, or any other corrective measures,
- (5) The participant's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

### Types of Errors or Fraud

An incorrect subsidy determination caused by a participant generally would be the result of incorrect reporting of participant composition, income, assets, or expenses, but also would include instances in which the participant knowingly allows the PHA to use incorrect information provided by a third party.

An incorrect subsidy determination caused by a landlord generally would be the result of an incorrect landlord statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the participant). It also includes accepting duplicate HAP for the same unit in the same month, or after a participant no longer resides in the unit.

PHA incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding participant composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a participant, and (3) errors in calculation.

## De Minimis Errors

The PHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the PHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family. [24 CFR 5.609(c)(4)]

PHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when PHAs make de minimis errors in the income determination. Families will not be required to repay the PHA in instances where the PHA miscalculated income resulting in a family being undercharged for rent. PHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the PHA's de minimis error in income determination.

### PHA Policy

The PHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

## SUBSIDY UNDERPAYMENTS OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect Housing Assistance Payment (HAP) to the landlord, (2) an incorrect participant share established for the participant, and (3) an incorrect utility reimbursement to a participant.

### Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the PHA must promptly correct the HAP, participant share, and any utility reimbursement prospectively.

### OCHA Policy

Increases in the participant share will be implemented on the first of the month following a written 30-day notice.

Any decreases in participant share will become effective the first of the month following the discovery of the error.

### Reimbursement

In the case of participant errors or fraud, per HCV GB 22-12, the PHA will require participants to repay any excess subsidy they have received. The PHA may, but is not required to, offer the participant a repayment agreement in accordance with Chapter 16. If the participant fails to repay the excess subsidy, the PHA will terminate the participant's assistance in accordance with the policies in Chapter 12 [HCV GB pp. 22-12 to 22-13].



### OCHA Policy

OCHA will always offer a repayment agreement to participants in cases of excess subsidy.

In all cases of overpayment of subsidy caused by the landlord, the PHA will require landlords to repay any excess subsidy they have received. The PHA may recover overpaid amounts by withholding HAP for subsequent months, or if the debt is large, the PHA may allow the landlord to pay in installments over a period of time [HCV GB p. 22-13].

The PHA must reimburse a participant for any underpayment of subsidy, regardless of whether the underpayment was the result of staff error or staff or landlord program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserves. Neither a participant nor a landlord is required to repay an overpayment of subsidy if the error or fraud is caused by PHA staff [HCV GB. 22-12].

## PROHIBITED ACTIONS AND CORRECTIVE ACTIONS

### Prohibited Actions

Nobody involved in the HCV program can knowingly:

- Make a false statement to the PHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

### OCHA Policy

Any of the following will be considered evidence of program abuse by OCHA 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 landlord

- Seeking or accepting anything of material value from applicants, participating families, vendors, landlords, 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

### Corrective Actions

In the case of program abuse the PHA may, at its discretion, impose any of the following corrective actions.

- Require any responsible party to repay excess subsidy amounts paid by the PHA, as described earlier in this section.
- Deny or terminate the participant's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- Terminate the HAP contract (See Chapter 13).
- Bar a landlord from future participation in any PHA programs.

### Fraud Recoveries

The PHA may retain a portion of program fraud losses that the PHA recovers from a participant or landlord 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 participant 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

### A. Single Room Occupancy

### B. Congregate Housing

### C. Group Home

### D. Shared Housing

### E. Cooperative Housing

### F. Manufactured Homes

### G. Homeownership

## INTRODUCTION

According to [24 CFR 982 Subpart M], the PHA may permit a participant to use any of these special housing types:

Single Room Occupancy

Congregate Housing

Group Homes

Shared Housing

Cooperative Housing

Manufactured Homes (including manufactured home space rental)

Homeownership

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.

## A. SINGLE ROOM OCCUPANCY

### 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. An SRO unit can only be occupied by one person. 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 [24 CFR 982.602 through 982.605].



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.

The payment standard for SRO housing is 75 percent of the efficiency 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 efficiency utility allowance.

### HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below (24 CFR 982.605).

- **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:** Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the following requirements apply. 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.

## B. CONGREGATE HOUSING

### OVERVIEW

According to 24 CFR 982.606 through 982.609, 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 participant 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 participant, and the standard form of the HAP contract is used.

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 an efficiency 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.

### 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.

## C. GROUP HOME

### OVERVIEW

According to 24 CFR 982.610 through 982.14, and HCV G B p. 7-4, 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 participant, and the standard form of the HAP contract is used.

### PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the participant 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 participant unit size or the pro-rata share of the payment standard for the group home size. The pro-rata 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 pro-rata 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.

## 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.

## D. SHARED HOUSING

### OVERVIEW

According to 24 CFR 982.615 through 982.618, shared housing is a single housing unit occupied by an assisted participant 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 participant.

An assisted participant 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 participant.

If approved by the PHA, a live-in aide may reside with the participant 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 participant, and the standard form of the HAP contract is used.

### PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for a participant in shared housing is the lower of the payment standard for the participant unit size or the pro-rata share of the payment standard for the shared housing size.

The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted participant in the private space by the total number of bedrooms in the unit.

The HAP for a participant 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 participant living in shared housing is the lower of the utility allowance for the participant unit size (voucher size) or the pro-rata share of the utility allowance for the shared housing unit.

Example: A participant holds a 2-bedroom voucher. The participant decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200

The utility allowance for a 2-bedroom unit equals \$100

The prorata share of the utility allowance is \$150 (3/4 of \$200)

The PHA will use the 2-bedroom utility allowance of \$100.

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 participant 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.

## 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 participant under its lease, meets HQS. Requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- **Facilities Available for the Participant:** Facilities available to the assisted participant, 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 participant must contain at least one bedroom for each two persons in the participant. The number of bedrooms in the private space of an assisted participant must not be less than the participant unit size. A efficiency or one-bedroom unit may not be used for shared housing.

## E. COOPERATIVE HOUSING

### 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 participant that leases a cooperative housing unit from a cooperative member (24 CFR 982.619).

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.

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 participant for this purpose.

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## F. MANUFACTURED HOMES

### 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 (24 CFR 982.620 through 982.64, FR Notices 1/18/17).

(1) A participant 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 participant 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 participant that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

## Special Policies for Manufactured Home Owners Who Lease a Space

**Participant Income.** In determining the annual income of families leasing manufactured home spaces, the value of the participant's equity in the manufactured home in which the participant resides is not counted as a participant 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.

## PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATIONS

### Payment Standards

The PHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located [FR Notice 1/18/17].

The payment standard for the participant is the lower of the participant unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

### 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 participant actually incurred a hook-up charge because of a move. This allowance will not be given to a participant that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

If the amount of the monthly assistance payment for a participant exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the participant, lender, or utility company.

### OCHA Policy

OCHA will pay the remainder to the participant if at all possible.

### Space Rent

The rent for manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;

- The monthly payments made by the participant to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid unities.

### Amortization Costs

The monthly payment made by the participant to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a participant may be included in the monthly amortization payments made by the participant. In addition, set-up charges incurred before the participant became an assisted participant may be included in the amortization cost if monthly payments are still being made to amortize the charges.

### Housing Assistance Payment

The HAP for a manufactured home space under the HCV program is the lower of the payment standard minus the TTP or the manufactured home space rent (including other eligible housing expenses) 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.

### HQS

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.



## G. HOMEOWNERSHIP

### OVERVIEW

The homeownership option is used to assist a participant residing in a home purchased and owned by one or more members of the participant. A participant 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 (24 CFR 982.625).

There are two forms of homeownership assistance described in the regulations: monthly homeownership assistance payments and single down payment assistance grants. However, PHAs may not offer down payment assistance until and unless funding is allocated by Congress. Since this has not yet happened, only monthly homeownership assistance may be offered.

The PHA must offer 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.

### PARTICIPANT ELIGIBILITY

The participant 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 (24 CFR 982.627).

- The participant must have been admitted to the HCV program.
- The participant must qualify as a first-time homeowner, or may be a cooperative member.
- The participant must meet the Federal minimum income requirement. The participant must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult participant members who will own the home. The PHA may establish a higher income standard for families. However, a participant 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.
- For participants who are disabled, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For participants who are elderly or disabled, welfare assistance payments for adult participant members who will own the home will be included in determining whether the participant meets the minimum income requirement. It will not be included for other families.
- The participant must satisfy the employment requirements by demonstrating that one or more adult members of the participant 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 participant.
- The employment requirement does not apply to participants who are elderly or disabled. In addition, if a household 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 participant 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 participant 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 participant has entered a contract of sale in accordance with 24 CFR 982.631(c).

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 participant. Any such limits or additional requirements must be described in the PHA administrative plan (24 CFR 982.626).

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.

### OCHA Policy

OCHA has one extra requirement for homeownership (HOV) eligibility: the participant must have savings in the amount of \$2,000 (as of 12/7/22). OCHA HOV guidelines can be found in the Exhibits.

## ELIGIBLE UNITS

According to (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 participant 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 participant.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the participant will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the participant 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 participant, both orally and in writing, that the participant has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the participant 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.

Additionally, the PHA will not approve the unit if the PHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

## SELECTION OF FAMILIES

It is the participant’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 participant to locate and purchase a home, and may require the participant to report on their progress in finding and purchasing a home. If the participant is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the participant a voucher to lease a unit or place the participant’s name on the waiting list for a voucher (24 CFR 982.626).

## HOMEOWNERSHIP COUNSELING

According to (24 CFR 982.630), Before commencement of homeownership assistance, the participant 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 participant 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.

### OCHA Policy

OCHA suggests partner agencies in the community for homeownership counseling. A list of community resources can be found with the HOV Guidelines in the Exhibits.

## HOME INSPECTION, CONTRACT OF SALE, AND PHA DENIAL OF SELLER

### Home Inspection

The PHA may not commence monthly homeownership assistance payments for a participant until the PHA has inspected the unit and has determined that the unit passes HQS (24 CFR 82.631).

An independent professional inspector selected by and paid for by the participant 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 participant 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.

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.

### Contract of Sale

According to [24 CFR 982.631(c)], the participant must enter into a contract of sale (with the seller of the unit) and must provide a copy of the contract to the PHA. The PHA must receive the copy of the contract before it begins making homeownership assistance payments or providing a downpayment assistance grant. The contract of sale must:

- Specify the price and terms of sale.
- Provide for the prepurchase inspection arranged by the purchaser.
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory.
- Provide that the purchaser is not obligated to pay for any necessary repairs.
- Certify that the seller is not debarred, suspended, or subject to a limited denial of participation.

### Denial 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)].

## FINANCING

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 (24 CFR 982.632).

### OCHA Policy

OCHA does not have any extra requirements for financing.

HA may not require that families acquire financing from one or more specified lenders, thereby restricting the participant's ability to secure favorable financing terms.

## CONTINUED ASSISTANCE REQUIREMENTS

Homeownership assistance may only be paid while the participant is residing in the home. If the participant moves out of the home, the PHA may not continue homeownership assistance after the month when the participant moves out. The participant or lender is not required to refund to the PHA the homeownership assistance for the month when the participant moves out (24 CFR 982.633).

Before commencement of homeownership assistance, the participant must execute a statement in which the participant agrees to comply with all participant obligations under the homeownership option:

- The participant must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The participant may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased participant member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The participant must supply information to the PHA or HUD as specified in 24 CFR 982.551(b). The participant 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 participant must notify the PHA before moving out of the home.
- The participant must notify the PHA if the participant defaults on the mortgage used to purchase the home.

- No participant member may have any ownership interest in any other residential property.
- The participant must comply with the obligations of a participant 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).

## MAXIMUM TERM OF HOMEOWNER ASSISTANCE

According to (24 CFR 982.634), except in the case of a participant that qualifies as elderly or disabled, participant 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 participant 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 a participant who is elderly, the exception only applies if the participant qualifies as elderly at the start of homeownership assistance. In the case of a participant who is disabled, the exception applies if at any time during receipt of homeownership assistance the participant qualifies as disabled.

If, during the course of homeownership assistance, the participant ceases to qualify as disabled or elderly, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a participant must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the participant is otherwise eligible to receive homeownership assistance).

If the participant 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.



## HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES

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 (24 CFR 982.635).

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 participant 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 participant 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 participant, or at the PHA's discretion, to a lender on behalf of the participant. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the participant.

Homeownership assistance for a participant terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the participant. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the participant.

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 participant is a person with disabilities, such debt may include debt incurred by the participant 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 participant 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.

### OCHA Policy

OCHA will allow all of these expenses, with no limit on allowances.

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 participant is a person with disabilities, such debt may include debt incurred by the participant 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.

## **PORTABILITY**

Subject to the restrictions on portability included in HUD regulations and PHA policies, a participant may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the participant into its voucher program, or bill the initial PHA (24 CFR 982.632).

The participant 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 participant has purchased an eligible unit under the program, or if the participant is unable to purchase a home within the maximum time established by the PHA.

## **MOVING WITH CONTINUED ASSISTANCE**

A participant receiving homeownership assistance may move with continued tenant-based assistance. The participant 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 participant member holds title to the prior home (24 CFR 982.637).

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 accordance with the PHA's policy regarding number of moves within a 12-month period.
- The PHA will deny the participant permission to move to a new unit with continued voucher rental assistance if:
- The participant defaulted on an FHA-insured mortgage; and
- The participant fails to demonstrate that the participant has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the participant has moved, or will move, from the home within the period established or approved by HUD.

## **DENIAL OR TERMINATION OF ASSISTANCE**

At any time, the PHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 or 24 CFR 982.553.

The PHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy, with the exception of failure to meet obligations under the Participant Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.

The PHA must terminate voucher homeownership assistance for any member of participant receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

# CHAPTER 16

## PROGRAM ADMINISTRATION

### A. Administrative Fee Reserve

### B. Setting Program Standards And Schedules

### C. Informal Reviews And Hearings

### D. Debts To The PHA

### E. Section 8 Management Assessment Program (SEMAP)

### F. Record Keeping

### G. Reporting And Record Keeping For Children With Elevated Blood Lead Level

### H. Protections For Persons Experiencing Interpersonal Violence

## 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:

### **A. Administrative Fee Reserve**

PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

### **B. Setting Program Standards and Schedules.**

What payment standards are, how they are updated, as well as how utility allowances are established and revised.

### **C. Informal Reviews and Hearings.**

Requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

### **D. Debts to the PHA.**

Policies for recovery of monies that the PHA has overpaid on behalf of families, or to landlords, and describes the circumstances under which the PHA will offer repayment agreements to landlords and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

### **E. Section 8 Management Assessment Program (SEMAP).**

What SEMAP scores represent, how they are established, and how those scores affect a PHA.



### **F. Record-Keeping.**

Privacy rights of applicants and participants and record retention policies the PHA will follow.

### **G. Reporting and Record Keeping for Children with Elevated Blood Lead Level.**

PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age, and are receiving HCV assistance.

### **H.: Protections for People Experiencing Interpersonal Violence (VAWA).**

Key terms used in VAWA and describes requirements related to notifying families and landlords 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.

## **A. ADMINISTRATIVE FEE RESERVE**

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.

### OCHA 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 OCHA Board.

## B. SETTING PROGRAM STANDARDS AND SCHEDULES

### 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 participant can receive (application of the payment standards is discussed in Chapter 6); and
- Utility Allowances, which specify how a participant’s payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

### OCHA Policy

Copies of the payment standard and utility allowance schedules are available for review on OCHA’s website.

Families, landlords, 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.A.

### PAYMENT STANDARDS

The payment standard sets the maximum subsidy payment a participant 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 (24 CFR 982.503; HCV GB, CHAPTER 7).

The PHA will 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 will 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)].

### OCHA Policy

OCHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published (usually October), and at other times as determined necessary. In addition to ensuring the payment standards are always within the “basic range” OCHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** OCHA 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. OCHA 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 participant share.

**Changes in Rent to Landlord:** OCHA may review a sample of the units to determine how often landlords are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** OCHA 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:** OCHA 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 January 1st of every year, or within three months of the FMR effective date, whichever is earlier. The effective date is applicable both to HUD-required revisions and to discretionary revisions.

## Exception Payment Standards

The PHA will 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 [982.503(c)].

## Unit-by-Unit Exceptions

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 participant 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 [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26].

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 participant if the required amount exceeds 120 percent of the FMR.

## "Success Rate" Payment Standard Amounts

According to [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 50th, rather than the 40th percentile FMR). To support the request, the PHA will 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.

## Decreases in the Payment Standard below the Basic Range

The PHA will request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if participant share for more than 40 percent of participants exceeds 30 percent of adjusted monthly income [24 CFR 982.503(d)].

## UTILITY ALLOWANCE

A PHA-established utility allowance schedule is used in determining participant share and PHA subsidy. The PHA will 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 (24 CFR 982.517).

The utility allowance schedule will 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 will use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance will 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 will 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 will 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 will be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

### OCHA Policy

OCHA has included an allowance for air-conditioning in its schedule.

## 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 participant member with a disability. For example, if a participant 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 will review its schedule of utility allowances each year, and will 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.

## Determination of Insufficient Funding

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 participant 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.



## C. INFORMAL REVIEWS AND HEARINGS

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. 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 "informal hearing" [24 CFR 982.54(d)(12) (13)].

### INFORMAL REVIEWS

When a program applicant disagrees with or wants to appeal a PHA decision, this is called an informal review. 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, Federal Register 60, no. 127: 34690].

### Decisions Subject to Informal Review

The PHA will give an applicant the opportunity for an informal review of a decision in the following circumstances [24 CFR 982.554(a), 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 participant 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

### OCHA Policy

OCHA will consider informal reviews for all of the circumstances listed above, even those not required by HUD. OCHA would like to hear any feedback or grievances from applicants, and requests that applicants contact OCHA staff with their concerns.

### Notice to the Applicant

The PHA will give an applicant prompt notice of a decision denying assistance. The notice will contain a brief statement of the reasons for the PHA decision, and will also state that the applicant may request an informal review of the decision. The notice will describe how to obtain the informal review [24 CFR 982.554(a)].

### Scheduling an Informal Review

#### OCHA Policy

An applicant can request an informal review by contacting OCHA staff however they prefer (e.g. email, mail, fax, phone, in-person, etc.). OCHA will schedule and send written notice of the informal review within 10 business days of the applicant's request.

### Informal Review Procedures

The informal review will be conducted by a person not involved with making or approving the decision under review, nor a subordinate of anyone making or approving the decision. The applicant will be provided an opportunity to provide input on the PHA's decision [24 CFR 982.554(b)].

#### OCHA Policy

OCHA has designated the following to serve as Neutral Officer to hear grievances:

- Any department manager not affiliated with HCV program

The Neutral Officer may ask the participant or OCHA staff for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision.

### Informal Review Decision

The PHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be sent within 10 business days of the informal review, to the applicant and his or her representative, if any. If the decision to deny is overturned as a result of the informal review, processing for admission will resume [24 CFR 982.554(b)].

If the applicant fails to appear for their informal review, the denial of admission will stand and the applicant will be so notified.

#### OCHA Policy

Upon failure to appear, OCHA staff will attempt contact with applicants by all forms of most current contact information. If unable to contact applicant within thirty (30) calendar days, the denial of admission will stand and the applicant will be so notified.

### INFORMAL HEARINGS FOR PARTICIPANTS

PHAs will offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant. A participant is defined as a household 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 participant's circumstances are in accordance with the law, HUD regulations and PHA policies [24 CFR 982.555].

The PHA cannot terminate a participant's assistance until the time allowed for the participant 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 will give a participant an opportunity for an informal hearing are as follows:

- A determination of the participant'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 participant unit size under the PHA's subsidy standards
- A determination to terminate assistance for a participant because of the participant'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 HUD rules
- A determination to terminate a participant's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the participant'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 is not in compliance with the HQS
- A determination by the PHA to exercise or not to exercise any right or remedy against a landlord under a HAP contract

### OCHA Policy

OCHA will consider informal hearings for all of the circumstances listed above, even those not required by HUD. OCHA would like to hear any feedback or grievances from applicants, and requests that applicants contact OCHA staff with their concerns.

In an effort to create trauma-informed procedures and avoid the process feeling like a trial to clients, OCHA will refer to "Informal Hearings" as "Informal Appeals."

### Notice to the Participant

When the PHA makes a decision that is subject to informal hearing procedures, the PHA will inform the participant of its right to an informal hearing at the same time that it informs the participant of the decision [24 CFR 982.555(c)].

For decisions related to the participant's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the participant unit size, the PHA will notify the participant 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 participant's assistance, or the denial of a participant's request for an exception to the PHA's subsidy standards, the notice will contain a brief statement of the reasons for the decision, a statement that if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and a statement of the deadline for the participant to request an informal hearing.

### Scheduling an Informal Hearing

When an informal hearing is required, the PHA will proceed with the hearing in a reasonably expeditious manner upon the request of the participant [24 CFR 982.555(d)].

### OCHA Policy

A participant can request an Informal Appeal by contacting OCHA staff however they prefer (e.g. email, mail, fax, phone, in-person, etc.), within thirty (30) calendar days of the decision. OCHA will schedule and send written notice of the Informal Appeal within ten (10) business days of the participant's request.

If a participant cannot attend the scheduled meeting, OCHA staff will attempt contact by all forms of the most current contact information. If unable to contact the participant within thirty (30) calendar days, the PHA decision will stand and the participant will be so notified.

### Pre-Hearing Right to Discovery

Participants and the PHA are permitted pre-hearing discovery rights. The participant will be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The participant will 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 participant, the PHA may not rely on the document at the hearing [24 CFR 982.555(e)].

The PHA hearing procedures may provide that the PHA will be given the opportunity to examine any participant documents that are directly relevant to the hearing, at the PHA offices before the hearing. The PHA will be allowed to copy any such document at the PHA's expense. If the participant does not make the document available for examination on request of the PHA, the participant may not rely on the document at the hearing. For the purpose of informal hearings, documents include records and regulations.



### OCHA Policy

OCHA will provide copies of relevant documents to participants free of charge. OCHA will encourage clients to bring in all supporting documentation, including personal references, to the meeting, and send it to OCHA Staff early if possible.

### During the Hearing – Counsel, Hearing Officer, and Evidence

At its own expense, the participant may be represented by a lawyer or other representative at the informal hearing [24 CFR 982.555(e)(3)].

The informal hearing will be conducted by a person not involved with making or approving the decision under review, nor a subordinate of anyone making or approving the decision [24 CFR 982.555(e)(4)]. 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)].

### OCHA Policy

In an effort to create trauma-informed procedures and avoid this process feeling like a trial to clients, OCHA will refer to “hearing officers” as “Neutral Officers.” OCHA has designated the following to serve as Neutral Officers:

- Any department manager not affiliated with HCV program

The Neutral Officer may ask the participant or OCHA staff for additional information and/or might adjourn the meeting in order to reconvene at a later date, before reaching a decision.

OCHA Staff will provide documentation of agency decision to Neutral Officer before meeting, but will not discuss the case in any other way either verbally or in writing.

The Neutral Officer will run the meeting.

The PHA and the participant will 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 [24 CFR 982.555(e)(5)].

### Hearing Officer’s Decision

The person who conducts the hearing will issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant will be based on a preponderance of evidence presented at the hearing [24 CFR 982.555(e)(6)].

### OCHA Policy

The Neutral Officer will issue a written decision to the participant and OCHA no later than 10 business days after the meeting. The report will contain the following information:

Hearing information:

- Name of the participant;
- Date, time and place of the meeting;
- Name of the Neutral Officer;
- Name of OCHA representative; and
- Name of participant representative (if any).

Background: A brief, impartial statement of the reason for the meeting.

Summary: Neutral Officer will summarize events, documents and facts of the meeting.

Determination: Neutral Officer will render a conclusion derived from the facts, state whether OCHA’s decision is upheld or overturned, and indicate next steps.

In making their determination, after the meeting the Neutral Officer can pursue further procedural information (e.g. regarding police procedures in issuing warrants), but cannot pursue further evidence unless requested by client (e.g., contacting personal references). The Neutral Officer is not required to follow up on client requests, they exercise judgment on a case-by-case basis. In the written decision, the Neutral Officer will disclose all follow-up information either pursued or not pursued.

### Issuance of Decision

The PHA will promptly provide a copy of the hearing decision to the participant [24 CFR 982.555(e)(6)].

## OCHA Policy

The Neutral Officer will notify participants of their determination by mail and email as soon as possible, but no longer than ten (10) calendar days after the meeting.

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 [24 CFR 982.555(f)]

If the PHA determines it is not bound by the hearing officer's decision, the PHA will promptly notify the participant of the determination and the reason for the determination.

## HEARING AND APPEAL PROVISIONS FOR NONCITIZENS

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 [24 CFR 5.514].

Assistance to a participant 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 participant 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 participant member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the participant from exercising the right to seek redress directly through judicial procedures.

### Notice of Denial or Termination of Assistance

According to [24 CFR 5.514(d)], the notice of denial or termination of assistance for noncitizens will advise the participant or applicant:

- 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 participant 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 participant 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 participant 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

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA will notify the participant of the results of the USCIS verification. The participant will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal will be made by the participant in writing directly to the USCIS. The participant will provide the PHA with a copy of the written request for appeal and the proof of mailing [24 CFR 5.514(e)].

The participant will forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material will 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 participant is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the participant, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA will notify the participant of its right to request an informal hearing.

### Informal Hearing Procedures for Applicants

The informal hearing procedure for noncitizens will be the same as already described in this chapter, with the addition of the following considerations:

- **Representation and Interpretive Services.** The participant is entitled to be represented by an attorney or other designee, at the participant's expense, and to have such person make statements on the participant's behalf. The participant is entitled to request an interpreter. Upon request, the PHA will provide competent interpretation services, free of charge.
- **Recording of the Hearing.** The participant is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

### Informal Hearing Procedures for Residents

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the participant may request that the PHA provide a hearing. The request for a hearing will 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 [24 CFR 5.514(f)]. For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16.C.

## Retention of Documents

The PHA will retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the participant, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process [24 CFR 5.514(h)]:

- The application for assistance
- The form completed by the participant 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

## D. DEBTS TO THE PHA

### REPAYMENT POLICY

PHAs are required to include in the administrative plan policies concerning repayment by a participant of amounts owed to the PHA [24 CFR 982.54]. The term repayment agreement refers to a formal written document signed by a tenant or landlord and provided to PHA in which a tenant or landlord acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods [24 CFR 792.103].

#### OCHA Policy

OCHA will reduce future HAP payments to indebted landlords by the amount owed until the debt is paid in full. If the landlord is not entitled to future HAP payments, OCHA will offer to enter into a repayment agreement.

For indebted participants who do not enter into or breach a repayment agreement, OCHA will respond in accordance with the policies in Chapter 12 on termination.

Notice PIH 2017-12 recommends that the total amount that a participant will pay each month—the participant’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the participant’s monthly adjusted income. However, a participant may already be paying 40 per cent or more of its monthly

adjusted income in rent. Moreover, Notice PIH 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)].

#### OCHA Policy

OCHA will work with participants on repayment plans that are affordable for their budgets, and strive for flexibility when extenuating circumstances occur. OCHA will consider a repayment agreement breached or in default if the participant makes no payment in a consecutive 12-month period and does not communicate with OCHA about any extenuating circumstances. In such cases, OCHA will proceed in accordance with the policies in Chapter 12 on termination.

### Repayment Agreements Involving Improper Payments

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a participant because it underreported or failed to report income:

- A reference to the items in the participant briefing packet that state the participant’s obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a participant’s action or failure to act
- A statement clarifying that each month the participant not only will pay to the PHA the monthly payment amount specified in the agreement but will also pay to the landlord the participant’s monthly share of the rent to landlord
- A statement that the terms of the repayment agreement may be renegotiated if the participant’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

## E. SECTION EIGHT MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

### CERTIFICATION

The Section Eight 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 PHAs 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].

PHAs will submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification will 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 will be executed by the HCV program director [24 CFR 985.101].

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 will 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 participant data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

### SEMAP INDICATORS

The table below lists each SEMAP indicators, contains a description of the indicator, and explains the basis for points awarded under each indicator (24 CFR 985.3 and form HUD-52648). A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, will not be rated under SEMAP indicators 1-7.

### SEMAP Indicators

#### Indicator 1: Selection from the waiting list

Maximum Score: 15

- 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.
- 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.

#### Indicator 2: Rent reasonableness

Maximum Score: 20

- 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 landlord is reasonable based on current rents for comparable unassisted units
- 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 landlord is reasonable, according to the PHA’s quality control sample.

#### Indicator 3: Determination of adjusted income

Maximum Score: 20

- This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted participant, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to the PHA’s quality control sample.

#### Indicator 4: Utility allowance schedule

Maximum Score: 5

- This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.
- 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 landlords 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 participant 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 Score: 5

- This indicator shows whether the PHA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program.
- Points are based on whether more or less than 2% of tenant rents were incorrectly calculated.

### **Indicator 11: Pre-Contract HQS Inspections**

Maximum Score: 5

- This indicator shows whether newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract.
- Points are based on whether the PHA inspected at least 98% of leased units on or before the beginning date of the lease.

### **Indicator 12: Continuing HQS Inspections**

Maximum Points: 10

- This indicator shows whether the PHA inspects each unit under contract at least annually..
- Points are based on what percentage of units under contract are more than two (2) months overdue for inspection, with thresholds at 5% and 10% for full or partial points.

### Indicator 13: Lease-Up

Maximum Points: 20 points

- This indicator shows whether the PHA enters into HAP contracts for the number of the PHA's baseline voucher units for the calendar year that ends on or before the PHA's fiscal year, or whether the PHA has expended its allocated budget authority for the same calendar year.
- Points are based on what percentage of allocated units or HAP are utilized, with thresholds at 95% and 98% for partial or full points, respectively.

### Indicator 14: Family Self Sufficiency (FSS) enrollment and escrow accounts

Maximum Points: 10 (not applicable for OCHA)

- This indicator shows whether the PHA has enrolled families in the FSS program as required, and the extent of the PHA's progress in supporting FSS by measuring the percent of current FSS participants with FSS progress reports entered in MTCS that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percentage of FSS allocations enrolled, and the percentage of escrow accounts showing growth.

### Success Rate of Voucher Holders (Bonus)

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)

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 50th percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th 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.

## F. RECORD KEEPING

### RECORD RETENTION

The PHA will 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 will be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA will ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights [24 CFR 982.158].

During the term of each assisted lease, and for at least three years thereafter, the PHA will keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the participant.

In addition, the PHA will 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 participant 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 landlord 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.

The PHA will keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a participant's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see 16.C, Retention of Documents.

### RECORDS MANAGEMENT

PHAs will maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### OCHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized OCHA staff.

OCHA staff will not discuss personal participant information unless there is a business reason to do so. Inappropriate discussion of participant information or improper disclosure of participant information by staff will result in disciplinary action.

#### Privacy Act Requirements

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 will be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law [24 CFR 5.212 and Form-9886].

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*.

#### 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 will 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 will 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 will 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.

## G. REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL

The PHA has certain responsibilities relative to children with elevated 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.

The landlord will report the name and address of a child identified as having an elevated blood lead level to the public health department within five (5) business days of being so notified by any other medical health care professional. The landlord will also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five (5) business days. The PHA may collaborate with the landlord on the notification process, such as by agreeing with the landlord to provide the required notifications on the landlord's behalf [24 CFR 35.1225(E); NOTICE PIH 2017-13].



### OCHA Policy

OCHA will collaborate with the landlord on the notification process once a participant or landlord notifies the agency of an issue.

At least quarterly, the PHA will 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 elevated blood lead level [24 CFR 35.1225(f)].

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA will 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 will carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA will 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.

### OCHA Policy

The county's Environmental Health Department (EHD) has declined to share the names or addresses of children less than 6 years old with an elevated blood level, as they consider this "protected health information." As such, OCHA will make no further attempts to obtain this information.

Additionally, EHD staff has stated they do not wish to receive a report, quarterly or otherwise, of an updated list of the addresses of units receiving assistance under the HCV program. Therefore, OCHA will not provide such a report.

These EHD positions were last confirmed on 12/16/22.

## H. PROTECTIONS FOR PEOPLE EXPERIENCING INTERPERSONAL VIOLENCE (VAWA)

### 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. Specific VAWA requirements and PHA policies are located primarily in the following sections:

- 3-I.B, “Changes in Family Composition”;
- 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-I.H, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and
- 12-I.I, “Termination Notice” [24 CFR 5.2003, 42 USC 13925].

As used in VAWA:

- The term **bifurcate** means to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining participant 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 participant 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 participant violence laws of the jurisdiction.

- The term **affiliated individual** means 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.

Further exhibits on VAWA can be found in the Exhibits.

### NOTIFICATION

#### 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 [24 CFR 5.2005(A)].

#### OCHA Policy

OCHA will post the following information on its website. It will also make the information readily available to anyone who requests it.

- A copy of the 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 OCHA’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)

Additionally, OCHA will post the following information both on its website and in the office:

- Contact information for local victim advocacy groups or service providers

## Notification to Program Applicants and Participants

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 [24 CFR 5.2005(a)(1)].

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 participant following an incident of domestic violence, Notice PIH 2017-08 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.

### OCHA Policy

Whenever OCHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, OCHA may decide not to send mail regarding VAWA protections to the victim's unit if OCHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, OCHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

## Notification to Landlords and Managers

While PHAs are no longer required by regulation to notify landlords and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

## DOCUMENTATION

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 request that the individual making the claim document the abuse. Any request for documentation will be in writing, and the individual will 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-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which will include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of 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 will attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim will 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].

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 may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA will hold separate hearings for the tenants [Notice PIH 2017-08, 24 CFR 5.2007(e)].

The PHA will honor any court orders issued to protect the victim or to address the distribution of property.

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). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted [24 CFR 5.2007(d)].

In order to deny relief for protection under VAWA, a PHA will 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 [24 CFR 5.2007(c)].

### **OCHA Policy**

In the case of domestic violence, OCHA will not require documentation beyond self-certification on HUD form 5382.

OCHA will advocate with landlords to accept the least possible documentation. E.g. if landlords are requiring more than self-certification, OCHA will advocate that they accept a letter of support from a caseworker such as those at Compass Center, Orange County Rape Crisis Center (OCRCC), or North Carolina Coalition Against Domestic Violence (NCCADV).

### **CONFIDENTIALITY**

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, will 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 [24 CFR 5.2007(B)(4)].

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## ***Exhibit 1.1:*** ***INTRODUCTION***

### **AUTHORITIES FOR POLICIES IN THE MODEL ADMINISTRATIVE PLAN**

The authority for PHA policies is derived from many sources. Primary among these sources are federal statutes, federal regulations, and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. Industry practice may also be used to develop policy as long as it does not conflict with federal requirements or prohibitions.

#### **HUD**

HUD provides the primary source of PHA policy through federal regulations, HUD notices, and handbooks. Compliance with federal regulations, current HUD notices, and current HUD handbooks is mandatory.

HUD also provides guidance to PHAs through other means such as HUD-published guidebooks, expired HUD notices, and expired handbooks. Basing PHA policy on HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a “safe harbor.”

Material posted on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations in various aspects of the program.

#### **STATE LAW**

Where there is no mandatory federal guidance, PHAs must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the PHA should follow the state law.

#### **INDUSTRY PRACTICE**

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. Industry practice refers to a way of doing things or a policy that has been adopted by a majority of PHAs.

## RESOURCES CITED IN THE MODEL ADMINISTRATIVE PLAN

The model administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the model administrative plan may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the model administrative plan or that may be helpful to you.

## ABBREVIATIONS

Throughout the administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the model administrative plan.

Abbreviation	Document
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001.
HUD-50058 IB	HUD-50058 Instruction Booklet
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.
HB 4350.3	Occupancy Requirements of Subsidized Multifamily Housing Programs

## RESOURCES AND WHERE TO FIND THEM

Following is a list of resources helpful to the PHA or referenced in the administrative plan, and the online location of each.

Abbreviation	Document
Code of Federal Regulations	<a href="https://www.ecfr.gov/">https://www.ecfr.gov/</a>
Earned Income Disallowance FAQ	<a href="https://www.hud.gov/program_offices/public_indian_housing/phr/about/ao_faq_eid">https://www.hud.gov/program_offices/public_indian_housing/phr/about/ao_faq_eid</a>
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule	<a href="http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf">http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf</a>
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data	<a href="https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF">https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF</a>
Executive Order 11063	<a href="https://www.archives.gov/federal-register/codification/executive-order/11063.html">https://www.archives.gov/federal-register/codification/executive-order/11063.html</a>
Federal Register	<a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a>
General Income and Rent Determination FAQs	<a href="https://www.hud.gov/sites/documents/DOC_7787.PDF">https://www.hud.gov/sites/documents/DOC_7787.PDF</a>
Housing Choice Voucher Program Guidebook (7420.10G),	<a href="https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook">https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook</a> <a href="https://www.nhlp.org/wp-content/uploads/HUD-Housing-Choice-Voucher-Guidebook-7420.10G-Apr.-2001-4.pdf">https://www.nhlp.org/wp-content/uploads/HUD-Housing-Choice-Voucher-Guidebook-7420.10G-Apr.-2001-4.pdf</a> <a href="https://www.lb7.uscourts.gov/documents/15c6523.pdf">https://www.lb7.uscourts.gov/documents/15c6523.pdf</a>
HUD-50058 Instruction Booklet	<a href="http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf</a>
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004	<a href="https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf">https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf</a>

RESOURCES AND WHERE TO FIND THEM, continued

Abbreviation	Document
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007	<a href="https://www.federalregister.gov/documents/2007/01/22/07-217/final-guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against">https://www.federalregister.gov/documents/2007/01/22/07-217/final-guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against</a>
Notice PIH 2012-10, Verification of Social Security Numbers (SSNs) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report	<a href="http://portal.hud.gov/huddoc/pih2012-10.pdf">http://portal.hud.gov/huddoc/pih2012-10.pdf</a>
Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System	<a href="https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF">https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF</a>
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice	<a href="https://www.hud.gov/sites/documents/DOC_8993.PDF">https://www.hud.gov/sites/documents/DOC_8993.PDF</a>
OMB Circular A-133	<a href="https://georgewbush-whitehouse.archives.gov/omb/circulars/a133/a133.html">https://georgewbush-whitehouse.archives.gov/omb/circulars/a133/a133.html</a>
Project-Based Voucher Program; Final Rule	<a href="http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf">http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf</a>
Rental Housing Integrity Improvement Program (RHIP) Frequently Asked Questions.	<a href="https://www.hud.gov/sites/documents/DOC_20488.PDF">https://www.hud.gov/sites/documents/DOC_20488.PDF</a>
VAWA Final Rule	<a href="http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf">http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf</a>
Verification Guidance, March 2004 (attachment to Notice PIH 2004-1)	<a href="https://www.hud.gov/sites/documents/DOC_9083.PDF">https://www.hud.gov/sites/documents/DOC_9083.PDF</a>

## **Exhibit 1.2: 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.

## **Exhibit 1.3: CONTENTS OF THE PLAN**

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

- 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, including policies on administering decreases in the payment standard during the HAP contract term (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).

**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.

### **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; 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 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; 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.

(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.

### ***Exhibit 3.2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION [20 U.S.C. 1001 and 1002]***

#### **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;

#### **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.

### **Exhibit 6.1: ANNUAL INCOME FULL DEFINITION**

24 CFR 5.609

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

*(b) Annual income does not include the following:*

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

1) The Federal government;

(2) A State, Tribe, or local government;

(3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

(4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

(5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

(1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;

(2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (

3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

(1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

(2) Expressly to assist a student with the costs of higher education; or

(3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

(i) 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);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount 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.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, 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 unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) 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.

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

(16) 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 in prospective monthly amounts.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) 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.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude 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 paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) 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; and

(ii) 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.

### ***Exhibit 6.2: TREATMENT OF FAMILY ASSETS***

#### **24 CFR 5.603(b) Net Family Assets**

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, PHAs or owners, as applicable, must 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 consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in

accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any "baby bond" account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) 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 trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.

### **Exhibit 6.3: 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 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.

## **Exhibit 7.1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS**

### **[HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

### **Elderly Noncitizens**

- 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.

### **All other Noncitizens**

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.
- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - "Admitted as a Refugee Pursuant to Section 207"
  - "Section 208" or "Asylum"
  - "Section 243(h)" or "Deportation stayed by Attorney General"
  - "Paroled Pursuant to Section 221 (d)(5) of the USCIS"
- Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".
- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - 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);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
- Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

## **Exhibit 8.1:**

### **AFFIRMATIVE HABITABILITY REQUIREMENTS**

#### **Affirmative Habitability Requirements: Inside**

- Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.
- Must meet or exceed the carbon monoxide detection standards set by the Secretary through Federal Register notification.
- Any outlet installed within 6 feet of a water source must be GFCI protected.
- Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
- Must have permanently mounted light fixtures in any kitchens and each bathroom.
- May not contain unvented space heaters that burn gas, oil or kerosene.

#### **Affirmative Habitability Requirements: Outside**

- Any outlet installed within 6 feet of a water source must be GFCI-protected.
- Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

#### **Affirmative Habitability Requirements: Unit**

- Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.
- Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.
- Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations:
  - On each level of the unit AND
  - Inside each bedroom or sleeping area AND
  - With 21 feet of any door to a bedroom measured along a path of travel AND
  - Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.

- If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
- Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.
- Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.
- Must have a permanently mounted light fixture in each bathroom and in the kitchen.
- Outlets within 6 feet of water source must be GFCI-protected.
- Must have permanently installed heating source.
- No units may contain unvented space heaters that burn gas, oil or kerosene.
- Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
- Must have at least one bedroom or living/sleeping room for each two persons.

**Exhibit 8.2:**  
**SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY**

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.

- **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.
- **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.
- **Sanitary Conditions.** The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- **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.
- **Lead-Based Paint Standards.** Families have no discretion with respect to lead-based paint standards and smoke detectors.

**Exhibit 11.1:**  
**Calculating Income At Annual Reexamination**

**Example 1: Calculating Annual Income at Annual Reexamination Using EIV**

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination	
<b>Ruby:</b> Wages: \$30,000	<b>Georgia:</b> SSI: \$10,980 (\$915 monthly)
<b>THE EIV REPORT PULLED ON 12/15/2023</b>	
<b>Ruby:</b> Wages Total: \$33,651 Quarter 3 of 2023: \$8,859 (City Public School) Quarter 2 of 2023: \$8,616 (City Public School) Quarter 1 of 2023: \$8,823 (City Public School) Quarter 4 of 2022: \$7,353 (City Public School)	<b>Georgia:</b> SSI Total: \$10,980 2023 benefit \$915 monthly
<b>INCOME REPORTED ON REEXAMINATION APPLICATION</b>	
<b>Ruby:</b> Wages at City Public School: \$32,000 (switched jobs but no permanent change to amount)	<b>Georgia:</b> SSI benefits: \$10,980 (no changes)
<p><b>Calculating Ruby’s wages:</b></p> <p><b>Step 1:</b> Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: \$33,651).</p> <p><b>Step 2:</b> Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).</p> <p><b>Step 3:</b> Ruby certifies that the \$33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use \$33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.</p>	<p><b>Calculating Georgia’s SSI benefit:</b></p> <p><b>Step 1:</b> Determine the prior annual income from EIV (i.e., \$915 x 12 months: \$10,980).</p> <p><b>Step 2:</b> Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).</p> <p><b>Step 3:</b> Ruby certifies the SSI income in EIV is accurate and reflects Georgia’s current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination:</p> <p><b>COLA:</b> \$64.05 (\$915 x 0.07)</p> <p><b>New gross SSI benefit:</b> \$11,748.60 (\$979.05 x 12 months)</p>
If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD’s verification hierarchy.	
<b>SUMMARY OF ANNUAL INCOME (AS REPORTED ON THE HUD-50058)</b>	
<b>Ruby (Head of Household):</b> Other Wage: \$33,651 Myers Family Total Annual Income: \$45,399	<b>Georgia (Other Youth Under 18):</b> SSI: \$11,748

## Example 2: Calculating Annual Income at Annual Reexamination Using EIV: Family Disagrees with EIV

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination
Wages: \$28,000
<b>THE EIV REPORT PULLED ON 1/15/2024</b>
Wages Total: \$18,271 Quarter 3 of 2023: \$2,500 (Viking Bakery) Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar) Quarter 2 of 2023: \$1,300 (Sasha's Sweets) Quarter 2 of 2023: \$584 (Larry's Concessions) Quarter 2 of 2023: \$2,401 (Viking Bakery) Quarter 1 of 2023: \$6,500 (Sasha's Sweets) Quarter 4 of 2022: \$600 (Sasha's Sweets) SS/SSI: No history of benefits
<b>INCOME REPORTED ON REEXAMINATION APPLICATION</b>
Wages: \$0 (permanent change; no longer receiving) Social Security: \$14,400 (\$1,200 monthly) Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.
<b>Calculating Wages and SS Benefit</b>
<b>Step 1:</b> Determine prior annual income taking into consideration the 7/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271) <b>Step 2:</b> Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500. <b>Step 3:</b> Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all. Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.
<b>SUMMARY OF ANNUAL INCOME (AS REPORTED ON THE HUD-50058)</b>
<b>Paul (Head of Household): \$14,400 (SS)</b> <b>Hewson Family Total Annual Income: \$14,400</b>

### Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha’s daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

Last reexamination – 11/1/2023 Annual Reexamination	
<p><b>Samantha:</b>                      Business income: \$28,000                      VA disability pension: \$12,000                      Child support: \$2,400</p>	<p><b>Fergus:</b>                      Wages: \$8,250                      Other non-wage income: \$3,000 (Go Fund Me online fundraiser)</p>
<b>THE EIV REPORT PULLED ON 9/16/2024</b>	
<p><b>Samantha:</b>                      Wages Total: \$0 (no wage data reported since Q1 2023)</p>	<p><b>Fergus:</b>                      Wages Total: \$8,600                      Quarter 1 of 2024: \$2,100 (Ian’s Fish ‘n’ Chips)                      Quarter 1 of 2024: \$500 (Claire’s Healthcare Sup-plyes)                      Quarter 4 of 2023: \$1,000 (Claire’s Healthcare Supplies)                      Quarter 3 of 2023: \$1,800 (The Onion Garden Shop)                      Quarter 2 of 2023: \$3,200 (Ivar’s Fish Haus)</p>
<b>CURRENT FAMILY CIRCUMSTANCES: INCOME REPORTED ON REEXAMINATION APPLICATION</b>	
<p>Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA’s annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian’s Fish ‘n’ Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.</p>	
<p><b>Samantha:</b>                      Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change)                      VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change)                      Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)</p>	<p><b>Fergus:</b>                      Wages: \$6,000</p>
<b>Calculating Samantha’s Net Business Income</b>	
<p><b>Step 1:</b> Determine prior annual net business income (i.e., \$28,000 on last HUD–50058).</p>	
<p><b>Step 2:</b> Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.</p>	
<p><b>Step 3:</b> Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.</p>	

### Calculating Samantha's VA Pension Income

**Step 1:** Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was \$1,000).

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

**Step 3:** The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

### Calculating Samantha's Child Support Income

**Step 1:** Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

**Step 3:** The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

### Calculating Fergus' Wages

**Step 1:** Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

**Step 3:** There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows \$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The PHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

### Calculating Fergus' Other Non-Wage Income

**Step 1:** Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD-50058).

**Step 2:** Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

**Step 3:** The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD-50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.

### Summary of Annual Income (as reported on the HUD-50058)

#### Samantha (Head of Household):

Own business: \$18,000  
Pension: \$12,300  
Child support: \$1,200

#### Fergus (Co-head):

Wages: \$9,360

## **Exhibit 12.1:** **HCV Program Family Obligations**

The family (including each household member) must follow the rules listed below in order to continue participating in OCHA's housing program.

### **A. The family **Must**:**

1. Supply any information that the Housing Authority (HA) or HUD determines to be necessary including evidence of citizenship or eligible immigration status, and information for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
2. Disclose and verify social security numbers and sign and submit consent forms for obtaining information.
3. Supply any information requested by the HA to verify that the family is living in the unit or information related to family absence.
4. Promptly notify the HA in writing when the family is away from the unit for an extended period in accordance with HA policies.
5. Allow the HA to inspect the unit at reasonable times and after reasonable notice.
6. Notify both the HA and the Owner in writing before moving out of the unit or terminating the lease.
7. Use the assisted unit for the residence by the family. The unit must be the family's only residence.
8. Promptly notify the HA in writing of the birth, adoption, or court-awarded custody of a child.
9. Request HA approval in writing to add any family member as an occupant of the unit. Any person staying at the premises more than thirty (30) consecutive days or ninety (90) cumulative days within a twelve (12) month period shall not be considered a guest and **MUST** be reported to the Housing Authority by the tenant.
10. Promptly notify the HA in writing if any family member no longer lives in the unit.
11. Give the HA a copy of any owner issued eviction notice.
12. Pay utility bills and supply appliances that the owner is not required to supply under the lease.

### **B. Any information the family supplies must be true and complete.**

### **C. The family **Must NOT**:**

1. Own or have any interest in the unit (other than in a cooperative, or the owner of a manufactured home leasing a manufactured home space).

2. Commit any serious or repeated violation of the lease.
3. Commit fraud, bribery or any other corrupt or criminal act in connection with the program.
4. Engage in 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.
  - a. 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. (24 CFR Sec 5.100);
  - 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. (24 CFR Sec 5.100).
  - c. In making its determination as to whether drug-related criminal activity or violent criminal activity occurred, the issue will be whether the preponderance of evidence indicates that a family has engaged in such activity, regardless of whether the family member has been arrested or convicted. (24 CFR 982.553(c)).
5. Engage in or threaten violent or abusive behavior toward OCHA personnel including its employees, contractors, subcontractors, or agents.
  - a. Violent or abusive behavior 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.
  - b. Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
6. Sublease or let the unit or assign the lease or transfer the unit.
7. Receive HCV tenant-based or Project-based 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.
8. Damage the unit or premises (other than damages from ordinary wear and tear) or permit any guest(s) to damage the unit or premises.
9. Own or have any interest in the unit (other than in a cooperative, or owner of a manufactured home leasing a manufactured home space).
10. Receive housing choice voucher program housing 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.

11. 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.

### **Exhibit 15.1: ORANGE COUNTY HOUSING AUTHORITY HOUSING CHOICE VOUCHER HOMEOWNERSHIP PROGRAM**

Updated June 2023

#### **1. GENERAL PROVISIONS**

The Housing Choice Voucher (HCV) Homeownership Program of the Orange County Housing Authority (OCHA) will permit eligible participants the option of purchasing a home with their HCV voucher, rather than renting.

HCV Homeownership may be used to purchase the following type of homes within Orange County: new or existing single-family, condominium, or manufactured homes. A manufactured home must be on a permanent foundation, or land that is owned, and in compliance with U.S. Department of Housing and Urban Development (HUD) Homeownership regulations. Duplexes and other investment-type properties are NOT eligible.

Eligible applicants for the HCV Homeownership Program may not have outstanding debts with this or any other public housing authority, and must meet the eligibility criteria set forth below.

#### **2. FAMILY ELIGIBILITY REQUIREMENTS**

Participation in the HCV Homeownership Program is voluntary. Each participant must meet the general requirements for admission to the HCV program set forth in OCHA's Administrative Plan. Such HCV families also must be "eligible" to participate in the Homeownership Program according to HUD's federal requirements, which state that the family must:

- (i) Be a first time homeowner or have a member who is a person with disabilities requiring the use of the homeownership option as a reasonable accommodation;
- (ii) With the exception of elderly and disabled households, meet a minimum income requirement without counting income from "welfare assistance" sources;
- (iii) With the exception of elderly and disabled households, meet the requisite employment criteria;
- (iv) Meet the requisite savings criteria;

- (v) Meet the requisite personal loan criteria;
- (vi) Have fully repaid any outstanding debt owed to OCHA or any other public housing authority;
- (vii) Not have defaulted on a mortgage securing debt to purchase a home under the homeownership option; and
- (viii) Not have any member who has a present interest in a residence at the commencement of home ownership assistance.

Additionally, each participating family must be able to meet all approval guidelines set forth by the lending institution.

##### **A. First-Time Homeowner.**

Each HCV Household, except those with a disabled member, must be a first-time homeowner. A "first-time homeowner" means that no member of the household has had an ownership interest in any residence during the three years preceding commencement of homeownership assistance. A single parent or displaced homemaker who, while married, owned a home with a spouse (or resided in a home owned by a spouse) is considered a "first-time homeowner" for the purposes of the HCV homeownership option. The right to purchase title to a residence under a lease-purchase agreement is not considered an "ownership interest."

##### **B. Minimum Income Requirement**

###### **(1) Amount of Income**

The family must meet the Federal minimum income requirement. At the time the family begins receiving homeowner assistance, 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. (Currently \$14,500 – February 2022)

For disabled families, the minimum income requirement is equal to the current SSI monthly payment for any individual living alone, multiplied by 12.

###### **(2) Exclusion of Welfare Assistance Income**

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

family's total tenant payment, or calculation of the amount of home ownership assistance payments.

### C. Employment History

With the exception of disabled and elderly households, each family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance is employed full-time (an average of 30 hours per week) and has been continuously employed for one year prior to execution of the sales agreement. In order to reasonably accommodate a family's participation in the program, OCHA will exempt families that include a person with disabilities from this requirement.

### D. Minimum Savings Requirement

Each family must demonstrate a minimum savings amount to be eligible for the HOV program. The savings cannot be the result of a personal loan. (Current savings amount is \$2000 – June 2023)

### E. No personal loans

The family must not have any outstanding personal loans apart from a car loan(s).

### F. Repayment of Any Housing Authority Debts

Participants in the HCV Program shall be ineligible for participation in the HCV Homeownership Program in the event any debt or portion of debt remains owed to any housing authority. Nothing in this provision will preclude HCV participants who have fully repaid such debt(s) from participating in the HCV Homeownership Program.

### G. Additional Eligibility Factors

#### (1) Elderly and Disabled Households

Elderly and disabled families are exempt from the income and employment requirements set forth in Sections 2.B and 2.C above. In the case of an elderly or disabled family, OCHA will consider income from all sources, including welfare assistance, in evaluating whether the household meets the minimum income required to purchase a home through the HCV Homeownership Program.

#### (2) Prior Mortgage Defaults

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

### H. Portability

Families determined eligible for homeownership assistance may exercise the Homeownership option outside of the OCHA jurisdiction if the receiving public housing authority is administering a Housing Choice Voucher (HCV) homeownership program and is accepting new families into its program. OCHA does not absorb vouchers from other jurisdictions.

## 3. FAMILY PARTICIPATION REQUIREMENTS

Once a family is determined to be eligible to participate in the Program, it must comply with the following additional requirements:

1. Complete a HUD-approved homeownership counseling program prior to commencement of homeownership assistance;
2. Within the required time, locate the home it proposes to purchase;
3. Submit a compliant sales agreement to OCHA for approval;
4. Allow OCHA to inspect the proposed homeownership dwelling to assure that the dwelling meets appropriate housing quality standards (HQS);
5. Obtain an independent inspection covering major building systems.

#### A. Homeownership Counseling Program

A family's participation in the homeownership program is conditional on the family attending and successfully completing a HUD-approved homeownership and housing counseling program prior to commencement of homeownership assistance. The homeownership counseling program will cover home maintenance, budgeting and money management, credit counseling, negotiating purchase price, securing mortgage financing, finding a home, and the advantages of purchasing and locating homes in areas that do not have a high concentration of low-income families.

The counseling agency providing the counseling program shall either be approved by HUD or the program shall be consistent with the homeownership counseling provided under HUD's Housing Counseling program. .

#### B. Locating and Purchasing a Home

##### (1) Locating a Home

a. Upon Certification of Eligibility from the HCV Homeownership Program, a family shall have 180 days to locate a home to purchase. The sales agreement must be approved by OCHA in order to become binding.

b. A home shall be considered located if the family submits a purchase offer with requisite components for OCHA approval.

c. For good cause, OCHA may extend a HCV family's time to locate a home for additional 90 day increments.

d. During home search, a participant's HCV rental assistance shall continue pursuant to the Administrative Plan.

e. If a HCV participant is unable to locate a home within the stated time, their HCV rental assistance shall continue.

#### (2) Type of Home

a. An approved HCV Homeownership participant may purchase the following types of homes: a new or existing home, a single-family home, a condominium, a home in a planned use development, or a manufactured home to be titled as real estate (as defined by HUD).

b. The home must already exist or be under construction at the time OCHA determines the family is eligible for homeownership assistance.

c. The family may purchase a home only in the jurisdiction of Orange County.

#### (3) Purchasing a Home

An Offer to Purchase and contract must be approved by OCHA. Once approved, the family shall have up to three months, or such other time as set forth in the OCHA approved offer, to purchase the home. (See section 3.C below for details.)

#### (4) Failure to Complete Purchase

If a HCV participant is unable to purchase the home within the maximum time permitted by the OCHA, through no fault of the tenant, OCHA shall continue the family's participation in the HCV rental program.

### C. Offer to Purchase

Prior to execution of sales agreement, the financing terms must be provided by the family to OCHA for approval. The sales agreement must provide for inspection by the OCHA and an independent inspection referred to in Section 3.D below and must state that the purchaser is not obligated to purchase unless such inspections are satisfactory to the OCHA. The contract also must provide that the purchaser is not obligated to pay for any necessary repairs without approval by the OCHA. The sales agreement must also contain a seller certification that the seller is not debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24.

### D. Independent Initial Inspection Requirement

To assure the home complies with HQS of the HCV program, homeownership assistance payments may not commence until the OCHA first inspects the home. An independent inspection of existing homes covering major building systems also must be completed by an inspector, licensed by the state of North Carolina, selected by the family and approved by the OCHA. The OCHA will

not pay for the independent inspection; however, the inspection may be paid for by the buyer or seller. The independent inspection report must be provided to the OCHA. The OCHA may disapprove the unit due to information contained in the report or for failure to meet federal housing quality standards.

### E. Financing Requirements

Proposed financing terms must be submitted to and approved by OCHA prior to close of escrow, at which time OCHA shall determine the affordability of the family's proposed financing. In making such determination, the OCHA may take into account other family expenses including but not limited to childcare, unreimbursed medical expenses, education and training expenses, etc. Seller-financing mortgages shall be considered by OCHA on a case by case basis.

### F. Compliance with Family Obligations

A family must agree, in writing, to comply with all family obligations under the HCV program and the OCHA's homeownership policies. OCHA reserves the right to recapture funds obtained through fraud. The family obligations include:

- (1) Complying with the mortgage terms;
- (2) Not selling or transferring the home to anyone other than a member of the assisted family who resides in the home while receiving homeownership assistance;
- (3) Not refinancing or adding debt secured by the home without prior approval by OCHA;
- (4) Not obtaining a present ownership interest in another residence while receiving homeownership assistance;
- (5) Keeping the home exclusively occupied by family members known to OCHA (no renting rooms in the home); and
- (6) Supplying all required information to OCHA, including but not limited to annual verification of household income, notice of change in homeownership expenses, notice of move-out, and notice of mortgage default. OCHA's Homeownership Family Obligation Policies are set forth in Exhibit A of this document.

The Director of the OCHA shall have the discretion to waive or modify any provision of the Home Ownership Program or policies not governed by statute or regulation for good cause, or to comply with changes in HUD regulations or directives.

## 4. AMOUNT OF ASSISTANCE

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

ownership expenses minus the TFC. The HCV participant will pay the difference. If a participant provides fraudulent financial information in order to qualify for the program, OCHA reserves the right to recapture funds obtained through fraud.

#### A. Determining the Payment Standard

The voucher payment standard is the fixed amount the OCHA annually establishes as the “fair market” rent (FMR) for a unit of a particular size located within the OCHA jurisdiction. In the Homeownership Program, the initial payment standard will be the lower of either (1) the payment standard for which the family is eligible based on family size; or (2) the payment standard which is applicable to the size of the home the family decides to purchase. The payment standard is the greater of (1) the standard in effect at commencement of the homeownership assistance; or (2) the payment standard in effect at the most recent regular reexamination for the family’s income and size. The initial payment standard, for purposes of this comparison, shall not be adjusted even if there is a subsequent decrease in family size. OCHA will request HUD approval of a higher payment standard, up to 120% of the published FMR limit, where warranted as a reasonable accommodation for a family that includes a person with disabilities.

#### B. Determining the Monthly Homeownership Expense

Monthly homeownership expense includes all of the following: principal and interest on the initial mortgage and any mortgage insurance premium (MIP) incurred to finance the purchase and any refinancing of such debt; real estate taxes and public assessments; homeowner’s insurance; maintenance expenses per OCHA allowance; costs of major repairs and replacements per OCHA allowance (replacement reserves); utility allowance per OCHA’s schedule of utility allowances; principal and interest on mortgage debt incurred to finance major repairs, replacements or improvements for the home including changes needed to make the home accessible; and homeowner association dues, fees or regular charges assessed, if any.

#### C. Determining the Total Family Contribution

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

#### D. Payment to a Family or Lender

OCHA may pay the homeownership assistance payments directly to the family, or at OCHA’s discretion, to a lender on behalf of the

family. If the assistance payment exceeds the amount due to the lender, OCHA will pay the excess directly to the family.

#### E. Underwriting Options

The following underwriting options are suggested under this program. The lender may decide upon the option based upon income and borrower qualifications determined on a case-by case by the lender, and dependent upon the specific loan products utilized.

- (1) Gross-up or HAP as Income Model- Mortgage qualification uses family income + HAP as income
- (2) Off-set or PITI Reduction Model- Mortgage qualification is based on 100% of HAP amount being applied to the PITI. Housing ratio is used to determine buying power: net housing payment divided by gross monthly income
- (3) Two Mortgage or Two Tiered Model- Family income is used for qualification purposes for only the first mortgage. HAP is used to qualify for a subordinate or second mortgage.

#### F. Loan Restrictions

Mortgages with balloon payments, interest only, or variable interest rates are not allowed under OCHA’s program. The buyer may not enter into a seller financing or lease-purchase agreement under this program. OCHA reserves the right to review lender qualifications and the loan terms before authorizing homeownership assistance.

### 5. TERMINATION OF HCV HOMEOWNERSHIP ASSISTANCE

#### A. Grounds for Termination of Homeownership Assistance

- (1) Failure to Comply with Family Obligations under HCV Program or the OCHA’s Homeownership Policies.

A family’s homeownership assistance may be terminated if the family fails to comply with its obligations under the HCV program, OCHA homeownership policies, or if the family defaults on the mortgage. If required, the family must attend and complete ongoing homeownership and housing counseling classes. The family must comply with the terms of any mortgage incurred to purchase and/or refinance the home.

The family must provide OCHA with: written notice of any sale or transfer of any interest in the home; any plan to move out of the home prior to the move; the family’s household income and homeownership expenses on an annual basis; any notice of mortgage default received by the family; and any other notices which may be required pursuant to OCHA homeownership policies. Except as otherwise provided in this section, the family may not convey or transfer the home to any entity or person while receiving homeownership assistance, nor may the home be used for rental income or commercial use.

## (2) Occupancy of Home

Homeownership assistance will only be provided while the family resides in the home. If the family moves out of the home, the OCHA will not continue homeownership assistance, commencing with the month after the family moves out. Except in the case of fraud, neither the family nor the lender is obligated to reimburse the OCHA for homeownership assistance paid for the month the family moves out.

## (3) Changes in Income Eligibility

A family's homeownership assistance may be changed in the month following annual recertification of the household income, but participation in the HCV program shall continue until such time as the assistance payment amounts to \$0 for a period of six consecutive months.

## (4) Maximum Term of Homeownership Assistance

A family may receive HCV homeownership assistance for no longer than 10 years from the date of close of escrow unless the initial mortgage incurred to finance purchase of the home has a term that is 20 years or longer, in which case the maximum term is 15 years. Families that qualify as disabled families at the commencement of homeownership assistance or at any time during the provision of homeowners' assistance are not subject to a maximum term limitation. If a disabled family or elderly family ceases to qualify as disabled or elderly, the appropriate maximum term becomes applicable from the date homeownership assistance commenced; provided, however that such family shall be eligible for at least six additional months of homeownership assistance after the maximum term becomes applicable. The time limit applies to any member of the household who has an ownership interest in the unit during any time that homeownership payments are made, or is a spouse of any member of the household who has an ownership interest. The provisions of Section 5.A (subparagraphs 1 through 3) apply.

## B. Procedure for Termination of Homeownership Assistance

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

C. The OCHA will not recapture the Homeownership Voucher payments unless there was an act of fraud or misrepresentation of a material fact in order to obtain a benefit.

## D. Return to Rental Assistance

A family may choose to convert their Homeownership assistance back to rental assistance. A family member must not own any title or other interest in the prior home and may not move more

than once per year. OCHA will preview all requests to move with continued tenant-based assistance and may deny permission on a case by case basis.

## 6. CONTINUED PARTICIPATION IN HCV PROGRAM

### A. Default on FHA-Insured Mortgage

In the case of a default on a FHA-insured mortgage, the OCHA may permit the family to move with continued HCV rental assistance if the family demonstrates that it has (a) conveyed title to the home to HUD or its designee, as required by HUD; and (b) moved from the home within the period established or approved by HUD.

### B. Default on non-FHA-Insured Mortgage

In the case of default on a mortgage that is not FHA-insured, OCHA may permit the family to move with continued HCV rental assistance if the family demonstrates that it has (a) conveyed the title to the home to the lender or to its designee, as may be permitted or required by the lender; and (b) moved from the home within the period established or approved by the lender.

## 7. ADMINISTRATIVE FEE

For each month that the home ownership assistance is paid by OCHA on behalf of the family, the OCHA shall be paid the ongoing administrative fee described in 24 C.F.R. 982.152(b).

## 8. HUD REPORTING

All home closings must be reported to Greensboro HUD office by the 5th of each month following a closing. The report must contain the following information for each closing that occurred in the preceding month:

1. Homebuyer's name
2. Address of purchased property
3. Closing date
4. Type of HUD funds used (ex: HCV voucher, down payment assistance, etc.)

## 9. Adoption

This plan was adopted on August 18, 2010. Plan revision was adopted on October 17, 2012, with a second revision on February 25, 2022

**Exhibit 15.2:  
HOUSING CHOICE VOUCHER HOMEOWNERSHIP  
OBLIGATIONS**

This form is to be signed by the home buyer(s) in the presence of the OCHA's Homeownership Program Coordinator. The Coordinator will explain any and all clauses which you, the home buyer(s), may not understand.

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

1. Family Obligations: You must comply with all Family Obligations of the Housing Choice Voucher Program, excepting only the prohibition of owning or having an interest in the unit.
2. Housing Counseling: All participating family members (i.e. those signing the purchase offer and loan documents) must satisfactorily complete an OCHA provided or approved counseling program prior to commencement of home ownership assistance. The OCHA may require any or all participating members to attend additional housing counseling classes as a condition of continued assistance.
3. Purchase Contract: you must include contract conditions in any Offer to Purchase that give the OCHA a reasonable time (a) to inspect the home for compliance with HUD's Housing Quality Standards; (b) to review and approve a professional home inspection report obtained by you from an OCHA approved inspector.
4. Mortgage Obligations: You must comply with the terms of any mortgage incurred in the purchase of the property and must notify the OCHA's Homeownership Program counselor of any late payment or default notice.

5. Occupancy: you must occupy the unit as your principal residence. You may not transfer, sell, or assign interest in the property without the OCHA's prior written consent. You must notify the OCHA in writing prior to any sale, transfer, assignment, lease or other form of alienation of the assisted property.

6. Maintenance: You must maintain the property in a decent, safe and sanitary manner. You must allow the OCHA to inspect the property within one-week of a demand by the OCHA to conduct an inspection.

7. Annual Re-examination: You must annually provide the OCHA with current information regarding family income and composition in a format required by the OCHA.

8. Refinancing: you must notify OCHA in writing of any proposal to refinance the original purchase mortgage or of any proposal to encumber the property with secondary refinancing and obtain the OCHA's written approval of such financing prior to executing any loan documents.

9. Default: In the extent of a default on your mortgage obligation, you must cooperate with the OCHA and the lender to minimize any loss to the lender in order to maintain your eligibility to continue as a participant in the Housing

10. Choice Voucher Program.

By signing below, I attest that I have read and understood my obligations as a participant in the Housing Choice Voucher Home Ownership Program and I agree to abide by these responsibilities. I understand that the OCHA may terminate my home ownership assistance if I violate any of these obligations, but that I may request an informal review of any proposed notice of termination prior to it becoming effective.

Signature	Printed Name	Date
Signature	Printed Name	Date

**Exhibit 16.1:**  
**SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE**  
**VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

**Orange County Housing Authority**

**Notice of Occupancy Rights under the Violence Against Women Act<sup>3</sup>**

**To all Tenants and Applicants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>4</sup> The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

**Protections for Applicants**

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Protections for Tenants**

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

**Removing the Abuser or Perpetrator from the Household**

The PHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly

relating to domestic violence, dating violence, sexual assault, or stalking.

If the PHA chooses to remove the abuser or perpetrator, the PHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the PHA will allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the PHA will follow federal, state, and local eviction procedures. In order to divide a lease, the PHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

**Moving to Another Unit**

Upon your request, the PHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the PHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

1. You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
2. You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises

of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

The PHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The PHA's emergency transfer plan provides further information on emergency transfers, and the PHA will make a copy of its emergency transfer plan available to you if you ask to see it.

#### Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

The PHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the PHA will be in writing, and the PHA will give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. The PHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the PHA as documentation. It is your choice which of the following to submit if the PHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by the PHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you will sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.

- Any other statement or evidence that the PHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the PHA does not have to provide you with the protections contained in this notice.

If the PHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms 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 abuser or perpetrator), the PHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the PHA does not have to provide you with the protections contained in this notice.

#### Confidentiality

The PHA will keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

The PHA will not allow any individual administering assistance or other services on behalf of the PHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The PHA will not enter your information into any shared database or disclose your information to any other entity or individual. The PHA, however, may disclose the information provided if:

- You give written permission to the PHA to release the information on a time limited basis.
- The PHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires the PHA or your landlord to release the information.

VAWA does not limit the PHA'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 participant breaks up.

#### Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the PHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a

more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the PHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the PHA can demonstrate the above, the PHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

### **Other Laws**

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. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

### **Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with Greensboro HUD Field Office.

### **For Additional Information**

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, the PHA will make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact Orange County Housing Authority.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact Compass Center for Women at 919-929-7122.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact Compass Center for Women at 919-929-7122.

Victims of stalking seeking help may contact National Domestic Abuse Hotline: 1-800-799-7233

Attachment: Certification form HUD-5382

**Exhibit 16.2:**

**CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION,**

**FORM HUD-5382**

**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

**OMB Approval No. 2577-0286  
Exp. 06/30/2017**

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document will specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: \_\_\_\_\_
2. Name of victim: \_\_\_\_\_
3. Your name (if different from victim's): \_\_\_\_\_
4. Name(s) of other participant member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_
5. Residence of victim: \_\_\_\_\_
6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_  
\_\_\_\_\_
7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_
8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_  
\_\_\_\_\_
10. Location of incident(s): \_\_\_\_\_

In your own words, briefly describe the incident(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

## **Exhibit 16.3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

(HCV VERSION)

Attachment: Certification form HUD-5382

### **Orange County Housing Authority**

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Housing Choice Voucher Program

### **Emergency Transfers**

The PHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>5</sup> the PHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.<sup>6</sup> The ability of the PHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the PHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the public housing and housing choice voucher (HCV) programs are in compliance with VAWA.

### **Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer will expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify the PHA's management office and submit a written request for a transfer to any PHA office. The PHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the PHA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

### **Confidentiality**

The PHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the PHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

### **Emergency Transfer Timing and Availability**

The PHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The PHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant will agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The PHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the PHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the PHA will assist the tenant in identifying other housing providers who may have safe and available

units to which the tenant could move. At the tenant's request, the PHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

### **Emergency Transfers: Housing Choice Voucher (HCV) Program**

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, the PHA will assist you to move to a safe unit quickly using your existing voucher assistance. The PHA will make exceptions to program regulations restricting moves as required.

At your request, the PHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by the PHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by the PHA

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the PHA will refer you to organizations that may be able to further assist you.

### **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

**Exhibit 16.4:**

**EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383**

**EMERGENCY TRANSFER  
REQUEST FOR CERTAIN  
VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing  
and Urban Development**

**OMB Approval No. 2577-0286  
Exp. 06/30/2017**

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

**The requirements you will meet are:**

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.
- (2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.
- (3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

**Submission of Documentation:** If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or participant members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

1. Name of victim requesting an emergency transfer: \_\_\_\_\_
2. Your name (if different from victim's) \_\_\_\_\_
3. Name(s) of other participant member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_
4. Name(s) of other participant member(s) who would transfer with the victim: \_\_\_\_\_  
\_\_\_\_\_
5. Address of location from which the victim seeks to transfer: \_\_\_\_\_
6. Address or phone number for contacting the victim: \_\_\_\_\_
7. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_
8. Relationship of the accused perpetrator to the victim: \_\_\_\_\_
9. Date(s), Time(s) and location(s) of incident(s): \_\_\_\_\_  
\_\_\_\_\_
10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. \_\_\_\_\_
11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.  
\_\_\_\_\_  
\_\_\_\_\_
12. If voluntarily provided, list any third-party documentation you are providing along with this notice:  
\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

## **Exhibit 16.5: MODEL LANDLORD NOTIFICATION OF RIGHTS AND OBLIGATIONS**

### **Orange County Housing Authority**

#### **NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS**

#### **UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

#### **Purpose**

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by landlords of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as a landlord of housing assisted through [insert name of housing provider] HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

#### **Denial of Tenancy**

Protections for applicants: Landlords cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant will be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

#### **Eviction**

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

a. Nothing in the VAWA Final Rule limits the authority of a landlord, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or

2) The distribution or possession of property among members of a household in a case.

b. Nothing in the VAWA Final Rule limits a landlord from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the landlord does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in the VAWA Final Rule limits a landlord from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the landlord can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an "actual and imminent threat" if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. 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, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to "actual and imminent threat" should be utilized by a landlord 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. Restrictions predicated on public safety cannot be based on stereotypes, but will be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

#### **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the landlord has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD's regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the landlord chooses to request this documentation, the landlord will make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

a. Form HUD-55383 (Self-Certification Form); or

b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, "professional") from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:

2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or

d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The landlord will accept any of the above items (a – c). The landlord has discretion to accept a statement or other evidence (d).

The landlord is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the landlord makes a written request for documentation, the landlord may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The landlord may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the landlord is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:

a. Deny admission by the applicant or tenant to the housing or program;

b. Deny assistance under the covered housing program to the applicant or tenant;

c. Terminate the participation of the tenant in the covered housing program; or

d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

### **Moves**

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

### **Lease Bifurcation**

Landlords may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If a landlord chooses to bifurcate the lease, the landlord will comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance will be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

To avoid unnecessary delay in the bifurcation process, HUD recommends that landlords seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the landlord regains possession of the unit. The landlord would then execute a new lease with the victim.

### **Evictions Due to "Actual and Imminent Threat" or Violations Not Premised on Abuse**

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit a landlord from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does

the VAWA Final Rule prohibit a landlord from evicting a tenant if the landlord can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the landlord would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider will have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. 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; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

### Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, will be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the landlord (or those within their employ, e.g., contractors) will not have access to the information unless explicitly authorized by the landlord for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The landlord will not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, landlords will take precautions to ensure compliance with these confidentiality requirements.

### Service Providers

Orange County Housing Authority has extensive relationships with local service providers. Orange County Housing Authority staff is available to provide referrals to shelters, counselors, and advocates. These resources are also provided in Orange County Housing Authority Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

### Definitions

**Actual and imminent threat** refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. 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, and the length of time before the potential harm would occur.

**Affiliated individual**, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

**Bifurcate** means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

**Dating violence** means 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:
  - (i) The length of the relationship;
  - (ii) The type of relationship; and
  - (iii) The frequency of interaction between the persons involved in the relationship.

**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 participant 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 participant violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

**Sexual assault** means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

**VAWA** means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

<sup>1</sup> Text of 45 CFR 260.31 follows.

<sup>2</sup> FR Notice 11/24/08 makes note of pending revisions to this regulation, namely the exclusion of any deferred disability benefits received in lump-sum or prospective monthly amounts from the Department of Veterans Affairs (VA). At the time of publication, 24 CFR 5.609 had yet to be updated.

<sup>3</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>4</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing will be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

<sup>5</sup> Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

<sup>6</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing will be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

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Confidentiality (16.H)

Documentation (16.H)

Notification (16.H)

Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking (3.C)

Terminations Related to Domestic Violence, Dating Violence, Sexual Assault or Stalking (12.A)

Voucher (5.B)

Extensions (5.B)

Issuance (5.B)

Size (5.B)

Subsidy Standards (5.B)

Term (5.B)

Waiting List (4.B)

Accessibility of Pre-Application Process (4.A)

Application Interview (4.C)

Applying for Assistance (4.A)

Completing the Application Process (4.C)

Family Outreach (4.B)

Notification of Selection (4.C)

Opening and Closing (4.B)

Organization (4.B)

Placement (4.A)

Reporting Changes in Family Circumstances (4.B)

Selection (4.C)

Updating (4.B)

Welfare (6.A)